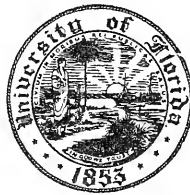


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LAW AND DIPLOMACY  
IN THE SPANISH CIVIL STRIFE

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INTERNATIONAL LAW AND DIPLOMACY  
IN THE SPANISH CIVIL STRIFE



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IN THE  
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By *39-15412*  
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To  
GEORGE GRAFTON WILSON

*whose instruction, counsel and labors have been  
an aid and an inspiration to innumerable students  
and practitioners of the Law of Nations, this  
work is inscribed by the author as a testimonial  
of his homage and affection.*

History

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## PREFACE

INSURRECTIONS and civil wars in Spain customarily have been productive of international complications. Considering the strategic locations and the natural wealth of the Spanish domains, the extensive maritime frontiers, the sizable navy and merchant marine, and the passionate manner in which arms have always been employed, it is not surprising that these crises have had such results. Spanish questions have long been intimately related to the international struggle for power in Europe, and foreign states have intervened in virtually every major civil disturbance in Spain. The contemporaneous strife in Spain has been no exception to the general rule.

This volume does not purport to be a history of the recent struggle. It does not undertake to fathom the causes of the disturbance, to assay the issues at stake, to trace the course of hostilities, or to analyze the political consequences. It merely represents an attempt to discuss impartially some of the outstanding problems of international law and diplomacy which have been evoked by the conflict and upon which reliable information has been procurable. Problems of international law and diplomacy common to civil disturbances in general have appeared as might have been expected. These, however, have been supplemented by activities and questions heretofore never encountered in such disturbances in Europe or elsewhere. For the first time aircraft, submarines, and submarine mines have been extensively employed, raising complex international issues, not provided for in existing conventions or generally accepted rules of international law. Long regarded as a general principle of international law, non-intervention was made the object of a special accord and accompanied by the institution of significant agreements and international administrative machinery. The Spanish hostilities have been made a testing ground for the weapons and engines of destruction of many nations. At the same time they have been utilized as a laboratory for the testing of national policies, international law and international organization. If it may seem deplorable to some

to treat together in one volume matters of both law and diplomacy, it must be said that the law which was applied, and the manner in which it was applied during the Spanish contest, were intimately connected with and hardly separable from national policies and European diplomacy. To treat the law without some reference to the diplomatic activities which sponsored, controlled and sometimes curtailed its normal operation would be to place international law in an artificial chamber and to distort the situation as it actually existed between 1936 and 1939.

It has been difficult to decide whether to use the term *Civil War* in the title or to resort to the expression *Civil Strife*. Speaking before the House of Commons in July, 1937, the First Lord of the Admiralty, Mr. Alfred Duff Cooper, remarked: "By every definition of civil war known to me, what is going on in Spain at the present time is *civil war*." With this conclusion most international lawyers would not be in entire agreement, inasmuch as belligerent rights were not accorded to the Spaniards by any foreign Power. Lacking such accordance, a legal state of war was not in existence. Notwithstanding this fact, the formal legislative and executive acts of at least thirteen states participating in the Non-Intervention system contained express use of the words "civil war in Spain," and such terminology was frequently employed in parliamentary debate by the most responsible statesmen of many countries. Certainly none would deny the existence of a major contest at arms or the prevalence of acts of war. At the Havana Conference of the American republics in 1928, a convention was signed on the Duties and Rights of States in the Event of Civil Strife. The phraseology "*civil strife*" was adopted by the Congress of the United States in the law of May 1, 1937. This expression seems to the author to be most apt with regard to the Spanish situation, implying as it does fighting, conflict, and contest, but stopping short of the implication of the existence of a state of legal war.

General interest is likely to center for some time to come in the Non-Intervention Accords and system organized in connection with the Spanish strife. No attempt has been made in the pages which follow to evaluate the reasons for, the exact extent of, or the results of foreign armed intervention in Spain. An accurate and honest examination of the intervention cannot be made until access can be



obtained to a large amount of official correspondence and data, which may well be kept confidential for decades to come. Rather than perpetuate unverifiable charges and half-truths, these aspects of the matter have been left largely untouched. It has been possible, on the other hand, to secure official documentation—agreements, laws, decrees, and orders—relating to the effort to stop or to observe and control the intervention. The legal issues, the national and international measures adopted, and the international administrative machinery created for supervision and enforcement have been discussed *in extenso* in Chapter III.

An effort has been made to collect and to include in the Appendices the important documents bearing not only upon the Non-Intervention system, but upon other international problems related to the strife. It seems possible that some of the precedents of national and international action established during the recent strife may be influential in shaping conduct toward civil strife elsewhere in the years to come. Many of the documents pertinent to this study have been of an ephemeral character and are not to be found in published collections of laws and decrees. Few of them are in languages normally used by American and English students of the law. Because of their importance and future inaccessibility, it has seemed worth while to assemble them, translate them, and reproduce them in permanent and usable form. An endeavor has been made to make the collection as complete as possible regarding the Non-Intervention system. It is possible, however, that some departmental orders and decrees may not have been supplied. For these omissions the author must beg the tolerance of the reader, for the task of assembling a complete documentation has been a most difficult one, involving the coöperation of many persons and officials. Documents supplied to the author in a foreign language have been noted in each case by the insertion of “(translation)” in the caption. Every effort has been made to procure an accurate rendition into the English. For any errors of translation the author assumes full responsibility and regret.

Acknowledgments are due to many who cannot be mentioned by name for help in the preparation of this volume. The author wishes to acknowledge with gratitude the coöperation which he has received from the Foreign Office officials of various states, from the

Department of State and many officers of the American Foreign Service, and from the secretariat of the Non-Intervention Committee, in the assembling of the documentary material. Without their help the venture would have been an impossible one. To Professor George Grafton Wilson of Harvard University and the Fletcher School, and to Mr. Denys P. Myers, Research Librarian of the Fletcher School, especial thanks are due for constant counsel, constructive suggestions, and for reading the manuscript in its entirety. Mr. Henry Seymour, formerly of the Fletcher School, aided in the research on numerous topics. Miss Adele Haley and Mrs. Mildred Lester gave generous help in typing and editing. A grant from the Bureau of International Research of Harvard University and Radcliffe College facilitated the preparation of the volume and is most gratefully acknowledged.

NORMAN J. PADELFORD.

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INTERNATIONAL LAW AND DIPLOMACY  
IN THE SPANISH CIVIL STRIFE



## CHAPTER I

### THE LEGAL STATUS OF THE CONTESTING PARTIES

#### THE OUTBREAK OF THE INSURRECTION

FORETOLD by months of cumulative unrest and violence, the standard of armed rebellion was raised in Spain on July 14, 1936, when a detachment of the army seized the government radio station at Valencia and broadcast the announcement that all military garrisons were in control of the Fascists. Government-censored news dispatches admitted the existence of widespread "insurrection" throughout Spain and its possessions on July 18. By the 22d of the same month the rebels controlled half of the national territory and had established a *Junta Defensa Nacional* "assuming the powers of the Spanish State." The Madrid Government decreed all rebellious officers and troops guilty of high treason, announced a determination to "wage decisive warfare on the rebels," distributed arms to the populace and created a "Red Militia."<sup>1</sup>

The most immediate questions of law which arise in any insurrection or civil war are: *first*, what is the legal status of the rebellious group within the state; *second*, what is the legal status of each of the contesting parties in the society of states; *third*, what rights do each of the parties have in dealing with the other, and with foreign states?

Distinction is often made between revolt, insurrection, rebellion, revolution, and civil war, although all are forms and degrees of opposition to and an endeavor to bring about an alteration of the institutions or politics of an established government.<sup>2</sup> By the municipal law of all countries, the taking up of arms against the state or its duly established government is a supreme crime, treason. Usually the

<sup>1</sup> *New York Times*, July 23, 1936.

<sup>2</sup> The various forms may be differentiated thus:

An insurrection or revolt is usually confined to a small portion of a country, is of relatively short duration, and supported by a minimum of organization. It is distinguishable from organized crime and is opposed by the troops of the state instead of by the police.

A rebellion or revolution usually embraces a larger part of a country, is supported by authorities assuming the functions and powers of a government and by organized and

extreme punishment attached by law to the act is mitigated for the soldiery when the armed uprising assumes the form and adopts the methods of public warfare. This, however, is determined only by comity, and is not required by any municipal law or treaty. When the disturbance attains such a magnitude that it cannot be dealt with by the police or by the administration of penal law, it is customary for the established government to make an admission of insurgency.<sup>3</sup> This may be accomplished by an official announcement; by a decree closing certain ports to foreign trade; by instituting military rule; or by the method of conducting hostilities. The admission of insurgency relieves the government of responsibility for the political and military acts of the insurgents in the territory under their control, and normally results in the treating of captured insurgents as prisoners of war rather than as traitors; but in no wise does it alter their precise legal standing under the law of the state. They remain treasonable until either they are granted an amnesty or become victors in the struggle, assuming the government of the state themselves. Admission of the fact of insurgency may also be made by foreign states, but such an act has no effect whatsoever upon the legal status of the

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disciplined troops. Rebellion usually implies resistance of a stouter and more extended nature than that which occurs in a revolt or insurrection.

The line of demarcation between rebellion and civil war may often be drawn only with difficulty and by reference to a concrete situation. Properly speaking, civil war is present when, in addition to the prerequisites already mentioned, hostilities between organized and disciplined forces are conducted on the basis of military science, tactics and regulations, with the winning of specific military objectives as the immediate goal of the fighting.

A full analysis of civil disturbances must involve many mutations. Insurrection may end with the reassertion of parental rule, with a change of government, or with the establishment of a new independent community. It may become rebellion, ending in any one of these ways. It may develop further into civil war, which may or may not be recognized as *de jure* war by the parent and/or foreign states, ending finally in one of the three ways indicated. The disturbance may commence as a rebellion on a large scale. Recognition as *the* or as a *de jure* government may be accorded to the rebels by foreign states prior to, in the absence of, concurrently with, or subsequent to recognition of belligerency by the parent or by foreign states. See N. J. Padelford, "International Law and the Spanish Civil War," *American Journal of International Law* (hereafter cited as *A.J.I.L.*), Vol. XXXI (1937), pp. 227-228, and references cited therein.

<sup>3</sup> On admission of insurgency, see G. G. Wilson, *Lectures on Insurgency* (Washington, 1901); G. G. Wilson, *Handbook of International Law* (2d ed., St. Paul, 1927), sec. 19; Naval War College, *International Law Situations* (hereafter cited *N.W.C.*), 1902, pp. 57-83; *ibid.*, 1904, pp. 26-62; *ibid.*, 1907, pp. 127-137; *ibid.*, 1912, pp. 10-62; J. B. Moore, *Digest of International Law* (Washington, 1908), Vol. I, p. 242 *et seq.*; C. Weiss, *Droit International Appliqué aux Guerres Civiles* (Lausanne, 1898), p. 115; H. Wehberg, *La Guerre Civile et le Droit International* (Paris, 1938), pp. 39-82.



rebels within their own state other than to relieve the established régime of responsibility toward the foreign state for the political and military acts of the insurgents in the territory under their jurisdiction. Admission of the fact of insurgency gives no mandate to either party to interfere with foreign property or commerce upon the high seas.

Referring to the Spanish situation, it may be seen that this broke out as an insurrection at Valencia July 14, quickly evolved into an armed rebellion, and, by July 23 had become *de facto* civil warfare waged by two organized armed forces supported by régimes each claiming to possess and to represent the powers of the Spanish state.<sup>4</sup> The decree issued by the Spanish Government on July 20 pronouncing all rebellious officers and troops guilty of treason, undoubtedly established the legal status of the rebels within the Spanish state. The voting of "special credits for the requirements of the civil war," and the official announcement that it would "wage decisive warfare on the rebels," unquestionably constituted an admission of insurgency by the Spanish Government.

#### THE ADMISSION OF INSURGENCY BY FOREIGN STATES

By innumerable acts and statements, foreign states readily admitted the existence of the insurrection. Mention need only be made of the conclusion of the Non-Intervention Accord by twenty-seven European states in August, 1936;<sup>5</sup> the request of the International Board of Control of Tangier on July 22 that the war vessels of "both parties" leave the harbor and refrain from conducting hostilities within the international zone;<sup>6</sup> the demand of the United States that compensation be made for property requisitioned "for the necessities of war";<sup>7</sup> the proposal of the Uruguayan Government for collective mediation.<sup>8</sup> While these steps were taken on various

<sup>4</sup> It appears that the insurgent "Junta Defensa Nacional" was reorganized Oct. 1 and 6, 1936, being superseded by a "government," with General Franco as the head. Charles Rousseau, "La Non-Intervention en Espagne," *Revue de Droit International et de Législation Comparée*, 1938, No. 2, pp. 256-258. Jan. 30, 1938, a law was adopted establishing the "Government of Nationalist Spain," having a President and 12 ministers. Boletín oficial del Estado (Burgos), Jan. 31, 1938.

<sup>5</sup> See Chapter III.

<sup>6</sup> *New York Times*, July 22, 28, 1936.

<sup>7</sup> See Chapter VI.

<sup>8</sup> See Chapter VI.

dates, the Powers represented on the international Non-Intervention Committee agreed, in the plans which were voted therein in November, 1937, and July, 1938, for the Withdrawal of Foreign Volunteers from Spain, upon July 18, 1936, as the date upon which the insurrection was to be regarded as having commenced.<sup>9</sup>

Prior to the admission of insurgency by foreign states, rebels enjoy no recognition or standing in the society of states. Admission of insurgency by foreign states confirms their *de facto* existence, and to that extent gives them a position and a personality, albeit anomalous and temporary. It admits that in fact they exercise control over foreign property and persons within the territorial area subject to their physical control. It places a separate responsibility upon them for acts performed within such an area. It confirms the existence of a quasi-responsible political organization with which the foreign states may deal informally for the satisfaction of any grievances or for matters connected with the conduct of hostilities. On the other hand, it gives them no legal right to go upon the high seas or into foreign waters, or to demand diplomatic intercourse. If they interfere in any way with foreign rights or commerce upon the high seas or in foreign waters, they may be captured and tried as for the performance of an act of piracy.

Throughout the stages of both pre- and post-admission of insurgency, the established government of the distraught state continues to enjoy its normal peace-time personality and status. It may continue its diplomatic relations with all friendly states and participate in international organizations as if no rupture of its domestic peace had occurred. Customarily, it has been permitted to purchase arms and war materials in the private markets of other states for the suppression of the revolt, a privilege often denied to insurgents by the domestic laws of foreign states. Beyond the confines of the national domains and the appurtenant territorial waters, it is entitled to no greater rights or privileges than those of any other sovereign political entity in time of peace.

Cognizance of the existence of the Spanish insurgent community as a quasi-legal personality was manifested in many ways and by

<sup>9</sup> See *Report of the Technical Sub-Committee on the Persons to be Withdrawn* (1937), printed *postea* in Chapter III, note 65; also Paragraph 49 of the Annex to the July 5, 1938, *Resolution of the Non-Intervention Committee*, printed *postea* in Appendix VIII-6. This is the date generally accepted by writers and official statements.

many states, with the chief exception of Soviet Russia which completely ignored the insurgents and insisted that there was only one party or government in Spain.<sup>10</sup> The presence of the new body politic was acknowledged by such means as the addressing of protests to the insurgent authorities when foreign rights were ignored or violated,<sup>11</sup> the despatching of appeals to them for the humanization of the war<sup>12</sup> or for guarantees of the safety of foreign lives and property,<sup>13</sup> requesting their coöperation with international efforts to enforce the Non-Intervention system<sup>14</sup> and to remove foreign volunteers from Spain.<sup>15</sup> In the early part of the strife many states conducted such business as they had to transact with the insurgent authorities through their consular officers remaining in the territory held by General Franco, or informally and unofficially from the temporary legations established at Hendaye and St. Jean de Luz in France. As the strife continued and national policies changed, some states terminated relations with the established government and recognized as *de jure* the government set up by General Franco; others, following a practice inaugurated by Great Britain a century ago for dealing with the South American communities then in revolt against Spain, and sanctioned by a considerable body of precedents

<sup>10</sup> The Russian delegate at the Non-Intervention Committee heatedly opposed the addressing of any note by the Committee to the insurgents for the humanization of the war, *London Times*, June 19, 1937. He also opposed the Four Power Naval Guarantee Arrangement of June 12, whereby the Powers conducting the International Observation and Control Scheme off Spain requested from both the rebels and loyalists guarantees of safety for their naval patrol vessels. *Ibid.*, June 11, 21, 1937. The British plan for the withdrawal of volunteers and the recognition of belligerency was objected to on similar grounds. *Ibid.*, Oct. 23, 27, 30, Nov. 5, 1937.

<sup>11</sup> Examples of such actions would include, for instance, British and French notes to General Franco, July 22, 1936, warning him to stop the "deliberate and irresponsible bombing of the shipping of the Straits"; United States' protests to both sides against the bombing of the U.S.S. *Kane*, Aug. 29, 1936; the presentation by Norway of a claim of \$250,000 for the seizure of Norwegian ships and cargoes, April 7, 1937; an official warning sent by the British Government, Aug. 27, 1937, that the rebels had no right to interfere in any way with British shipping, and that appropriate action would be taken if further unlawful bombings, torpedoings, and destruction of British vessels occurred.

<sup>12</sup> *London Times*, Nov. 6, 1936; June 19, 1937.

<sup>13</sup> *Ibid.*, June 1, 24, 1937.

<sup>14</sup> N. J. Padelford, "The International Non-Intervention Agreement and the Spanish Civil War," *A.J.I.L.*, Vol. XXXI (1937), pp. 578, 589; *Le Temps*, Dec. 24, 1937; Jan. 10, 1937.

<sup>15</sup> N. J. Padelford, *op. cit.*, pp. 600-602; *New York Times*, Nov. 3, 6, 24, 1937; *Resolution Adopted by the International Non-Intervention Committee*, July 5, 1938, *postea* in Appendix VIII-6.

in that and other regions,<sup>16</sup> made arrangements with the insurgents for the exchange of agents possessing a quasi-official character, while at the same time retaining diplomatic relations with the Spanish Government; <sup>17</sup> others still appear to have recognized the insurgent authorities as a *de jure* Government of Spain while still continuing to recognize the established government also as a *de jure* Government of Spain.<sup>18</sup>

<sup>16</sup> H. A. Smith, *Great Britain and the Law of Nations* (London, 1932), Vol. I, p. 117 *et seq.*; "Draft Convention on the Legal Position and Functions of Consuls Prepared by the Research in International Law of the Harvard Law School," Article 6 and Comment, *A.J.I.L.*, Vol. XXVI (1932), Suppl., pp. 238-241.

<sup>17</sup> Mr. Chamberlain, speaking in the House of Commons, remarked: "There is no intention on the part of His Majesty's Government to make any variation in the attitude which they have consistently adopted towards the contending parties and which is governed by the international agreement for non-intervention to which they have subscribed. They are, however, bound to take account of their responsibility for the protection of British nationals and British commercial interests throughout the whole of Spain, including those large areas in the North, West, and South-West parts of the country as well as the Spanish zone of Morocco of which General Franco's forces are now in effective occupation. It has become increasingly evident that the numerous questions affecting British interests in those areas cannot be satisfactorily dealt with by means of the occasional contacts which have hitherto existed. Accordingly, His Majesty's Government have entered upon negotiations for the appointment of agents by them and by General Franco respectively for the discussion of questions affecting British nationals and commercial interests, but these agents will not be given any diplomatic status." *Parliamentary Debates*, House of Commons, Vol. CCCXXVIII, pp. 1124-1125. See also the statement of Mr. Eden, *ibid.*, pp. 1384-1387.

<sup>18</sup> According to the *Bulletin de L'Institut Juridique International* of the Office Permanent de Documentation Juridique Internationale at The Hague, the following sets forth "a list of the other countries which have broken their relations with the Republican Government or established relations with the National Government:

- 1936. October 23. Portugal broke diplomatic relations with the Republican Government.
- November 8. Guatemala and El Salvador recognized the National Government.
- November 18. Germany and Italy recognized the National Government.
- November 26. Albania recognized the National Government.
- December 4. Nicaragua recognized the National Government.
- 1937. August 28. The Vatican recognized [*de facto*] the National Government [*de jure*, May 3, 1938].
- November 29. Yugoslavia recognized [*de facto*] the National Government.
- December 1. Japan recognized the National Government.
- December 2. Manchukuo recognized the National Government.
- December 6. Uruguay recognized [*de facto*] the National Government.
- 1938. January 13. Austria and Hungary recognized the National Government.
- February 28. Turkey recognized [*de facto*] the National Government.
- April 1. Greece recognized *de facto* the National Government.
- April [28] 13. Roumania recognized *de facto* the National Government.
- May 13. Portugal recognized the National Government.
- May 31. Czechoslovakia recognized *de facto* the National Government.
- July 27. The Netherlands recognized *de facto* the National Government." *Bulletin*, *op. cit.*, Vol. XXXIX (1938), p. 473.

This list does not mention Great Britain, whose action has been referred to above, nor does it mention Peru, which is understood to have severed relations with the Spanish

## RECOGNITION OF BELLIGERENCY IN INTERNATIONAL LAW

When hostilities during a civil strife attain the magnitude and form of public warfare, international law has customarily allowed foreign states, at their own will and discretion, to confer a different status upon both contesting parties through the recognition of belligerency.<sup>19</sup> Recognition of belligerency involves two things: acknowledgment of the bare fact that public war is being waged; and accordance of the legal rights and obligations toward foreign states attached by international law to belligerents conducting public international war.<sup>20</sup> The recognition of belligerency places the community in revolt, so far as the recognizing state is concerned, upon the same international status as regards the conduct of the war as that of the parent state. While not admitting the rebels to normal

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Government. The following states are also understood to have extended *de facto* recognition during 1938 by the appointment and exchange of agents: Belgium, Nov. 30; Bulgaria, Sept. 8; Denmark, Oct. 29; Finland, Nov. 3; Norway, Oct. 5; Sweden, Nov. 26.

A personal letter from the Spanish Embassy in Washington to the author, dated Jan. 12, 1939, states that Germany, Italy, Albania, Guatemala, Japan, Manchukuo, Nicaragua, Portugal and El Salvador "have broken diplomatic relations with the Government of the Spanish Republic and they do not have any representative in our zone."

Further treatment of the subject of recognition will be found on pages 190-191.

<sup>19</sup> On recognition of belligerency, see especially A. Rougier, *Les Guerres Civiles et le Droit des Gens* (Paris, 1903), p. 192 *et seq.*; Weisse, *op. cit.*, p. 11 *et seq.*; Moore, *Digest*, Vol. I, p. 164 *et seq.*; Wilson, *Handbook*, Sec. 21; Dana's note 15 to H. Wheaton, *Elements of International Law* (1866); W. E. Hall, *International Law* (8th ed., Oxford, 1924), pp. 36-46; L. Oppenheim, *International Law* (2d ed., London, 1912), Vol. I, p. 119 *et seq.*; R. R. Wilson, "Recognition of Insurgency and Belligerency," *Proceedings*, 31st Annual Meeting of the American Society of International Law; H. Wehberg, "Civil War and International Law," *The World Crisis* (London, 1938), pp. 168-199.

<sup>20</sup> Once belligerency has been recognized, the parties are expected to employ the international rules toward each other, although there is no obligation according to international law that they shall do so, inasmuch as the rules and conventions have been developed to apply to and are only legally binding upon sovereign states during war between themselves. Padelford, "International Law and the Spanish Civil War," *op. cit.*, p. 229; Rougier, *op. cit.*, p. 197; Weisse, *op. cit.*, p. 76; E. Vattel, *Law of Nations* (Philadelphia, 1854, Bk. III, Sec. 294; G. F. Martens, *Précis de Droit des Gens* (Paris, 1864-Bk. VIII, Sec. 265; P. Pradier-Fodéré, *Traité de Droit International Public* (Paris, 1885-1906), Bk. VI, Sec. 2658; C. Calvo, *Le Droit International* (Paris, 1896), Bk. IV, p. 25; P. Fauchille, *Traité de Droit International Public* (Paris, 1922), Pt. I, p. 309, Pt. V, p. 11; R. Phillimore, *Commentaries on International Law* (London, 1871), Vol. III, p. 168; Hall, *op. cit.*, p. 38. Rougier failed to find an instance of a *de jure* civil war carried on in a unitary state during the nineteenth century conducted according to the international rules of warfare, *op. cit.*, p. 41; also Weisse, *op. cit.*, p. 34. See *British and Foreign State Papers*, Vol. XXIV, p. 396 *et seq.*, for situation in Spain in 1835; *ibid.*, Vol. XXVII, p. 1095 *et seq.*, for violations in Spain in 1837-1838.

diplomatic intercourse, recognition of belligerency does advance their legal status and create in them a new international entity endowed with all of the rights and obligations of a sovereign state so far as the conduct of hostilities is concerned.<sup>21</sup> It releases the established government from responsibility to the recognizing state for all acts of the insurgents and for all losses occasioned by the necessary and proper execution of military measures. It requires the recognizing state to assume henceforth the legal position of a neutral. Recognition affects only the relations between the recognizing state and the contesting parties, and gives the latter no right to deal with non-recognizing states and their property as if they too had conferred recognition. It has been argued that the *de facto* existence of warfare should automatically entail a universal recognition of belligerency with the consequential extension of rights, obligations, and new status.<sup>22</sup> At the present stage of international law such a requirement does not prevail, and each foreign state is free to decide in accordance with its own interests whether and when it shall extend recognition of belligerency.<sup>23</sup> Not infrequently one or the other of the contestants in a civil disturbance attempts to gain the advantages of recognition without assuming the burdens, or to hasten the granting of such status and rights. Such evasions or promptings are not usually tolerated or respected, and belligerent rights are accorded when the factual situation and the self-interest of foreign states coincide in such a manner as to make the move expedient or necessary.

Was belligerent status accorded to the Spaniards? On this point there has been much discussion and disagreement.<sup>24</sup> The residuum

<sup>21</sup> A. Raestad, "La reconnaissance internationale des nouveaux états et des gouvernements," *Revue de Droit Internationale et de Législation Comparé* (hereafter cited *R.D.I.C.*), Vol. XVIII (1936), pp. 257, 263.

<sup>22</sup> Wehberg, *op. cit.*, pp. 169-177; G. Scelle, "La reconnaissance des insurgés et la guerre espagnole," *Die Friedens-warte* (Zurich), Vol. XXXVII (1937), p. 67.

<sup>23</sup> This is admitted by Professor Wehberg in a later writing in *Die Friedens-warte*, Vol. XXXVIII (1938), p. 128. Until the collective method of recognition through some international body can be provided for, which Professor Wehberg cogently advocates ("Civil War and International Law," pp. 177-178, 187-188) and which the present writer would heartily endorse, the present system must be followed.

<sup>24</sup> P. C. Jessup, "The Spanish Rebellion and International Law," *Foreign Affairs*, Jan., 1937, pp. 260-280; I. W. Garner, "Questions of International Law in the Spanish Civil War," *A.J.I.L.*, Vol. XXXI (1937), pp. 66-74; N. J. Padelford, "International Law and the Spanish Civil War," *ibid.*, Vol. XXXI, pp. 226-243; H. A. Smith, "Some Problems of the Spanish Civil War," 1937 *British Yearbook of International Law* (here-

appears to be that no recognition of belligerency by foreign states occurred during the two years of strife ending July 18, 1938. Nevertheless, because of the significance of this civil disturbance for international law, and because of the uniqueness of some of the situations presented, it will be well to examine the conditions and arguments advanced as a basis for recognition, and the grounds on which they were or must be rejected.

Four general developments gave rise to the issue of recognition of belligerency: (1) The announcements of projected blockades; (2) forcible interference with foreign shipping upon the high seas; (3) the Non-Intervention Accords and the measures adopted for their fulfillment; (4) recognition of the insurgent régime as the *de jure* Government of Spain.

#### ATTEMPTED CLOSURES OF PORTS

Announcements of the intended establishment of blockades were issued on five different occasions, twice by the Spanish Government, and three times by the insurgents. On the 9th of August, 1936, Madrid decreed Spanish Morocco, the Canary Islands, Ifni, and Rio de Oro to be "subject to blockade."<sup>25</sup> This was extended by another declaration August 11, to embrace the coasts of Huelva, Cadiz, Lugo, Corunna, Pontevedra, and the Balearic Isles.<sup>26</sup> November 17, 1936, the rebels announced their intention of stopping the traffic in war supplies to Barcelona by "every means of war."<sup>27</sup> April 9, 1937, General Franco informed the British Government that his forces were establishing a complete blockade of the Basque ports, and that attempts to violate the blockade would be resisted by force

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after cited *B.V.I.L.*), pp 17-31; G. Scelle, "La reconnaissance des insurgés et la guerre espagnole," *Die Friedens-warte* (Zurich), Vol. XXXVII (1937), pp. 65-70; J. H. W. Verzijl, "Het volkenrecht tegenover der Spaanschen burgeroorlog," *Nederlandsch Juristenblad*, April 3, 1937, pp. 349-359; G. B. Pallieri, "Quelques aspects juridiques de la non-intervention en Espagne," *R.D.I.C.* (Brussels), 1937, pp. 285-309; V. A. O'Rourke, "Recognition of Belligerency and the Spanish War," *A.J.I.L.*, Vol. XXXI, pp. 398-413; A. McNair, "The Law Relating to the Civil War in Spain," *Law Quarterly Review*, Vol. LIII (1937), pp. 471-500; J. W. Garner, "Recognition of Belligerency," *A.J.I.L.*, Vol. XXXII (1938), pp. 106-113, reviewing extensive correspondence in *London Times*; H. Wehberg, "Civil War and International Law," *The World Crisis* (London, 1938), pp. 160-199.

<sup>25</sup> *New York Times*, Aug. 10, 1936.

<sup>26</sup> *Ibid.*, Aug. 12, 1936.

<sup>27</sup> *Parliamentary Debates*, House of Commons, Vol. CCCXVII, p. 2073.

regardless of the consequences which might ensue.<sup>28</sup> Another proclamation was issued by the insurgent authorities November 28, 1937, this time declaring that "all vessels which attempt to enter government ports will be attacked."<sup>29</sup>

International law does not recognize the legality of a blockade unless it is supported by a force adequate to render all ingress and egress hazardous, and unless the party enforcing it is in the possession of belligerent rights. The answers which were made by foreign states to these several attempts to institute blockades upon the high seas and to punish foreign vessels for violations thereof leave little room for doubt as to whether belligerent rights were accorded to the Spaniards. The replies uniformly denied the Spaniards the legal right to seize foreign vessels upon the high seas for passing or attempting to pass announced blockade lines. Typical replies and acts may suffice to indicate the common attitude of the Powers, and their refusal to be pushed into granting belligerent status by such endeavors on the part of the Spanish contestants.

To the decrees of the Spanish Government, the British Government stated that it regarded neither party as a legal belligerent, that it would permit no interference with its merchant vessels outside of the three-mile limit, and that its war vessels had been ordered to "take aim" at any Spanish war vessel attempting to enforce such a blockade decree.<sup>30</sup> Germany branded the interference "Red piracy,"<sup>31</sup> and when the S.S. *Palos* was seized on the high seas in December, 1936, took reprisals against the government by the capture and detention of two Spanish merchant vessels.<sup>32</sup> The United States said, "It cannot admit the legality of any action on the part of the Spanish Government in declaring such ports closed unless that government declares and maintains an effective blockade of such ports."<sup>33</sup> In the face of this opposition, it was announced Madrid

<sup>28</sup> *London Times*, April 15, 1937.

<sup>29</sup> *New York Times*, Nov. 29, 1937. See Chas. Rousseau, "La Non-Intervention en Espagne," *op. cit.*, 1938, No. 3, pp. 528-538.

<sup>30</sup> *New York Times*, Aug. 22, 1936.

<sup>31</sup> *Ibid.*, Aug. 21, 1936.

<sup>32</sup> This case is discussed at length in Padelford, "International Law and the Spanish Civil War," *op. cit.*, pp. 237-242.

<sup>33</sup> *New York Times*, Aug. 27, 1936. It may be observed that in the insurrections in Spain, Portugal, and South America prior to the Declaration of Paris, 1856, little objection was raised to blockades of the present nature, even though poorly enforced. An exception to the otherwise general procedure occurred in 1822 in connection with the



"would not exercise her right of searching ships outside the territorial waters of Spain."<sup>34</sup>

Respecting the announcement of General Franco in November, 1936, the Department of State in Washington said that the United States had not, and did not intend to recognize the belligerency of either party.<sup>35</sup> In the English House of Commons, Mr. Eden stated, "We have accorded belligerent rights to neither side . . . and have no present intention of according such rights. As a consequence, His Majesty's Ships will, should it prove necessary, protect British merchant ships on the high seas against interference by the ships of either party. . . ." <sup>36</sup> In almost identical language it was announced

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ineffective Spanish blockade of Maracaibo. *Br. & For. St. Pap.*, Vol. X, pp. 942-945. After 1856 a different attitude was taken by all of the Powers. The stand of Britain regarding Lincoln's attempted closure of the Southern ports by a decree giving the North belligerent rights but withholding them from the South is well known. Recognition of belligerency was forced. Just prior to the American Civil War, in 1858, a Peruvian warship in time of insurrection there, stopped an American vessel, *Dorcas C. Jeaton*, with nitrates for the rebels, whereupon the United States forced Peru to apologize and admit her error. In 1870, Spain was forced to accept liability for the seizure of the *Virginus*. In 1875, Britain forced Spain to release the *Deerhound* seized on the high seas with arms and volunteers for the Carlist rebels in Spain. In each of these instances a blockade was attempted, but recognition of belligerency was not accorded by the foreign states. See Weisse, *op. cit.*, pp. 221-222; Rougier, *op. cit.*, pp. 309-312; Wilson in *A.J.I.L.*, Vol. I (1907), p. 54; 1907 N.W.C., pp. 136-137; 1912 N.W.C. p. 21; *U. S. Foreign Relations*, 1902, pp. 310, 417, 877; *ibid.*, 1903, p. 482; *ibid.*, 1905, p. 405; *ibid.*, 1907, Pt. I, p. 290.

The decrees of August 9 and 11 may be viewed as an attempted closure of ports rather than as a blockade *jure gentium*. In this event the practice of nations in the past is clear enough to demonstrate that such domestic closure of ports in the hands of insurgents need have no binding force upon the shipping of foreign countries. The statements made by Lord Russell in 1861 have found general acceptance in all instances since then. He said that "it was perfectly competent to the government of a country in a state of tranquillity to say which ports should be open to trade, and which should be closed. But in the event of insurrection or civil war in that country, it was not competent for its government to close ports which were *de facto* in the hands of insurgents, and that such a proceeding would be an invasion of the international law relating to blockade." He said further that such a decree would be "an evasion of that recognized maxim of the law of nations that the ports of a belligerent can only be closed by an effective blockade." Hansard, *Debates*, Vol. LXIII, p. 1646; *State Papers*, North America, No. 1 (1862). See Weisse, *op. cit.*, p. 225 ff.; Rougier, *op. cit.*, pp. 298-302; Moore, *Digest*, Vol. VII, Sec. 1272; C. C. Hyde, *International Law*, Vol. II, p. 655; E. D. Dickinson, "Closure of Ports in Control of Insurgents," *A.J.I.L.*, Vol. XXIV (1930), p. 69 *et seq.* See negotiations between the United States and Spain *re* closure of ports in 1822, *Br. & For. St. Pap.*, Vol. IX, pp. 787-790, 982-996.

<sup>34</sup> *New York Times*, Aug. 22, 1936.

<sup>35</sup> *Ibid.*, Nov. 20, 1936.

<sup>36</sup> *Parliamentary Debates*, House of Commons, Vol. CCCXVII, p. 2074; Vol. CCCXVIII, p. 7.

in France that, "Inside the three-mile limit French merchant ships will submit to the control of local authorities under international law. But beyond that zone the French Government will permit no halting, visiting or seizure by either of the two Spanish fleets."<sup>37</sup>

### THE BLOCKADE OF BILBAO

At the time of the siege of Bilbao in April, 1937, Prime Minister Baldwin asserted that the British Government "cannot recognize or concede belligerent rights and they cannot tolerate any interference with British shipping at sea."<sup>38</sup> Absolute protection, he added, would be given to all British vessels right up to the three-mile limit,<sup>39</sup> and responsibility for any damage would be placed directly on General Franco, a statement made good in practice during the ensuing weeks.<sup>40</sup> Mr. Eden admitted that "the natural thing, when a struggle has reached the large dimensions of the present war in Spain, would have been to recognize its belligerent character, and for States whose maritime interests are involved, as ours are, to grant belligerent rights to both sides." But, he added, "For a variety of reasons, in the present dispute we are not granting belligerent rights."<sup>41</sup> He later stated that the government believed that there was no necessity of recognition so long as it continued to pursue the non-intervention policy. Replying to Opposition criticism that the government was by its policy aiding the rebels and discriminating against the established government, Sir John Simon pointed out that a similar stand had been taken in August, 1936, when the Spanish Government attempted to establish a blockade. Asserting that under no circumstance would belligerent rights be extended, he went on to add that, "The British Government never said that when the Spanish Government, which was not recognized as engaged as a belligerent, took upon itself to say that it would endeavor to establish a *de facto* blockade the blockade was admitted to be lawful.

<sup>37</sup> *New York Times*, Nov. 25, Dec. 6, 1936. It appears that the British would have been ready to extend recognition of belligerency, Nov. 22, but that the French Government was unwilling to agree until Franco had produced a fleet and conducted an effective blockade (*ibid.*, Nov. 23), although it was denied in London, Nov. 21, that Franco had applied for recognition (*ibid.*, Nov. 22).

<sup>38</sup> *Parliamentary Debates*, House of Commons, Vol. CCCXXII, pp. 597-598.

<sup>39</sup> *London Times*, April 15, 1937.

<sup>40</sup> *Ibid.*, April 13, 23, 26, 1937.

<sup>41</sup> *Parliamentary Debates*, House of Commons, Vol. CCCXXII, p. 1134.

We have never admitted it. . . . When one says that belligerent rights are not admitted or conceded, that applies to both sides. There is no more right in a government that is fighting a civil war to interfere as a belligerent with ships on the high seas because they are a government, than there is such a right on the part of the insurgents. Both sides are in exactly the same position."<sup>42</sup>

The same stand was taken by the British and other governments in the latter part of November, 1937, when General Franco again sought to establish a legitimate blockade of the loyalist ports.<sup>43</sup>

It will be obvious from these statements that foreign states refused to legalize paper or *de facto* blockades which the contestants endeavored to establish upon the high seas. In acting thus, they expressly denied that the Spaniards possessed belligerent status or were authorized to exercise belligerent rights over foreign shipping on the high seas. In taking this stand they did not, however, deny the right of either party to regulate foreign shipping inside of the three-mile limit or to prevent, therein, access of supplies to the enemy.<sup>44</sup>

Throughout the war, foreign merchant and naval vessels were continuously subjected to forceful interference and destruction by surface, sub-surface and aerial craft under the control of both sides in Spain.<sup>45</sup> Both parties acted as if they possessed belligerent rights. Undoubtedly the motivation was in part a desire to secure the acknowledgment of such rights from the foreign states. Regardless of the intent behind the acts of the Spaniards, however, the foreign states steadfastly refused to legalize any form of interference, and entered protests, demands, reclamations, and made forthright pronouncements that belligerency had not been and would not be recognized.<sup>46</sup> Any doubt as to the conclusion that belligerent rights were withheld from Spain regardless of the extensive military operations on the high seas was removed by the phraseology employed in the Nyon Arrangement dealing with international protective meas-

<sup>42</sup> *Parliamentary Debates*, House of Commons, Vol. CCCXXII, p. 1039.

<sup>43</sup> *New York Times*, Nov. 30, 1937.

<sup>44</sup> See 1902 N.W.C. pp. 79-83; *ibid.*, 1907, pp. 136-137; *A.J.I.L.*, Vol. I (1907), pp. 54-55; Moore, *Digest*, Vol. II, pp. 1085-1086, 1089, 1112, 1118-1120; Weisse, *op. cit.*, pp. 45, 61, 222; Wilson, *Handbook*, p. 37; Westlake, *op. cit.*, Vol. I, p. 56; J. Goebel, "The International Responsibility of States for Injuries Sustained by Aliens on Account of Mob Violence, Insurrections, and Civil Wars," *A.J.I.L.*, Vol. VIII (1914), p. 849.

<sup>45</sup> See Appendix XV for list of such instances.

<sup>46</sup> These situations will be discussed at length in Chapter II.

ures against submarine attacks, signed on September 14, 1937, by Great Britain, Bulgaria, Egypt, France, Greece, Roumania, Turkey, the Soviet Union, and Yugoslavia, and adhered to subsequently by Italy.<sup>47</sup> Paragraph 3 of the Preamble recited that:

Whereas without in any way admitting the right of either party to the conflict in Spain to exercise belligerent rights or to interfere with merchant ships on the high seas even if the laws of warfare at sea are observed and without prejudice to the right of any participating Power to take such action as may be proper to protect its merchant shipping from any kind of interference on the high seas or to the possibility of further collective measures being agreed upon subsequently. . . .

#### THE NON-INTERVENTION SYSTEM AND RECOGNITION OF BELLIGERENCY

The third general development which gave rise to the question of whether belligerent status already existed or was thereby conferred was the conclusion of the various non-intervention accords and the adoption of the necessary measures by the several states for their fulfillment.<sup>48</sup> This unique international institution was based, in the first instance, upon an exchange of notes between twenty-seven European governments, whereby each government unilaterally declared its intention of preventing the shipment of arms, ammunition, and implements of war from its territory to either party in Spain. Statutes, orders, and decrees were voluntarily adopted and put into effect in the several states. As mentioned heretofore, this action unquestionably amounted to an admission of insurgency. While many of the national measures employed the expression "civil war in Spain," neither the Accords nor the national measures referred to belligerent rights or could in any way be construed as automatically conferring belligerency upon the Spaniards. The Accord was not, as one writer has claimed, "a collective declaration of neutrality,"<sup>49</sup> in the legal sense, establishing neutral and belligerent rights and duties.<sup>50</sup> That the non-intervention policy resembled neutrality to

<sup>47</sup> Reproduced in Appendix IX.

<sup>48</sup> A full consideration of the Non-Intervention system will be found in Chapter III.

<sup>49</sup> H. A. Smith, "Some Problems of the Spanish Civil War," *op. cit.*, p. 28.

<sup>50</sup> It may be granted that if a state is neutral in time of international war, the law requires the neutral to steer an impartial course, extending to each belligerent the same legal right to buy and to export from its jurisdiction, on pain of engaging in unneutral service and of being penalized accordingly by the injured belligerent. But because an

the extent of embodying an attitude of impartiality was admitted by Mr. Eden:

Supposing it is admitted that normally belligerent rights would have been granted, the granting of such rights in the present conditions would have been immensely beneficial to the Power which is strongest at sea, which, of course at present are the insurgent forces. What happened was that that non-intervention sought to create a new form of neutrality. Say, if you will, that it has succeeded or failed, but a result of that new form of neutrality has been that belligerent rights have not been granted, and a result of that has been to deprive the Power that is strongest at sea—surely this country, of all others, should understand the importance of that—of use of its superiority. I say that at the moment the insurgent forces are paying a very high price at sea for the assistance they may be receiving from foreign nationals on land.<sup>51</sup>

One important phase of the Non-Intervention system was the accord reached on February 16, 1937, that volunteering for armed service in Spain should be banned and that measures would be adopted to prevent the departure or transit of volunteers bound for Spain.<sup>52</sup> It is not seen why any recognition of belligerency should flow from this accord any more than from the accord for the embargo of materials of war. While foreign states may recognize belligerency implicitly, such a procedure is not normal and acts setting up the implication must be such as to leave no doubt as to the effect intended.<sup>53</sup> No such implication appears to have been embodied in this accord.

impartial embargo is imposed upon war materials destined to contestants in a civil struggle, it does not necessarily follow that the embargoing state has recognized either the existence of public war or a legal neutral status for itself. (Wilson, *Handbook*, p. 35.) A proclamation of neutrality is a legal acknowledgment that public war exists, that belligerent rights are exercisable, and that neutral rights and duties are being invoked. No such proclamation was made in the present instance.

<sup>51</sup> *Parliamentary Debates*, House of Commons, Vol. CCCXXVIII, p. 589.

<sup>52</sup> See Chapter III for extended discussion.

<sup>53</sup> Professor H. A. Smith, in "Some Problems of the Spanish Civil War," argues that recognition of belligerency "never constitutes a separate act by itself, but is only an inference to be drawn from conduct. . . . In a word, belligerent recognition exists whenever a foreign state adopts an attitude of complete impartiality as between the contending parties and treats them, so far as the war is concerned, upon a footing of entire equality." *Loc. cit.*, pp. 21, 22. It appears to the present writer that a considerable number of the Opinions of the Law Officers of the Crown quoted by Professor Smith in his *Great Britain and the Law of Nations* (London, 1932), refute his argument here. Westlake, *op. cit.*, Vol. I, p. 57; Moore, *Digest*, Vol. I, Sec. 61; A. Hershey, *Essentials of International Law* (New York, 1929), p. 204, take the view that recognition is not something to be gained by inference or implication.

Further doubts as to whether any of the Non-Intervention Accords or actions constituted an individual or collective recognition of belligerency in the legal sense were removed by the abortive Proposals submitted by the British Government July 14, 1937, for the Withdrawal of Volunteers from Spain, and by the Resolution adopted by the states members of the Non-Intervention Committee July 5, 1938, for the Withdrawal of Volunteers and the Recognition of Belligerent Rights.<sup>54</sup> Proposal B of the 1937 plan stated:

With a view to the more effective application of the policy of non-intervention, all Governments parties to the Non-Intervention Agreement to recognize the two parties in Spain as possessing a status which justifies them in exercising belligerent rights at sea, in accordance with the rules governing such exercise, but subject to the following special conditions. . . .

Never accepted by the collaborating states, nor by the Spanish authorities, the 1937 plan was at length superseded by the Resolution adopted without a negative vote at the plenary session of the Non-Intervention Committee July 5, 1938. This provided:

The Governments parties to the Non-Intervention Agreement having now deemed it expedient . . . to ensure the application of all the nine points of the United Kingdom Government's plan of the 14th July, 1937, dealing with the withdrawal of foreign volunteers, the grant of belligerent rights and the problem of control, . . . and therefore . . . to recognize in certain circumstances that the two parties in Spain possess a status which would justify them in exercising belligerent rights at sea. . . .

Rejected by General Franco, largely on the basis of the question of the grant of belligerent rights, the failure of the 1938 plan to come into operation left the question of recognition of belligerency precisely where it stood at the time of the voting of the Resolution; namely, that recognition of belligerency had not been conferred up to that time, or by any of the steps taken in connection with the Non-Intervention system.

#### RECOGNITION OF THE FRANCO GOVERNMENT

The same general question was raised in another manner by the German and Italian recognition of the Franco régime as the lawful government of Spain on November 19, 1936, with the consequent

<sup>54</sup> Appendix VIII, Nos. 1 and 6.

severance of diplomatic relations with Madrid.<sup>55</sup> Nothing was said in the communiqués of either government about conference of belligerent rights. Accordance of belligerent rights and recognition of a new *de facto* régime as the lawful government have always been regarded as separate actions.<sup>56</sup> Not infrequently the progression of steps during civil strife involves admission of insurgency, recognition of belligerency, the establishment of unofficial relations with the *de facto* authorities, recognition of those authorities as the *de jure* government. However, the taking of any of these steps without having had recourse to the preceding ones has always been regarded as permissible. Hasty or premature recognition of insurgent authorities as the *de jure* government may amount to intervention and be an unfriendly act to the established government, but it does not of itself operate in such a manner as automatically to extend belligerent rights to the conflicting factions.<sup>57</sup> There is no reason for inferring, on the basis of the then or subsequent actions of the German, Italian, or other governments, that the present instance was any exception to general practice. The attitudes of these Powers toward the 1937 and 1938 plans for the Withdrawal of Volunteers and the Recognition of Belligerency indicate that they had not regarded recognition of belligerency as having been conferred by their recognition of the Franco Government.<sup>58</sup>

<sup>55</sup> *New York Times*, Nov. 20, 1936.

<sup>56</sup> Weisse, *op. cit.*, p. 32. Mr. Eden advised the House of Commons to distinguish carefully between the two forms, suggesting that the British Government did so. *London Times*, Nov. 21, 1936. Professor Garner holds the view that there was no two-fold recognition, *A.J.I.L.*, Vol. XXXI (1937) p. 72. See also *New York Times*, Nov. 23, 28, Dec. 12, 1936; Hall, *op. cit.*, p. 105; Wilson, *Handbook*, p. 42; Moore, *Digest*, Vol. I, p. 73; Oppenheim, *op. cit.*, Vol. I, p. 119; Hyde, *op. cit.*, Vol. I, p. 80; Fauchille, *op. cit.*, Pt. I, Vol. I, p. 323.

<sup>57</sup> Moore, *Digest*, Vol. III, p. 46 ff.; Hyde, *op. cit.*, Vol. I, p. 129; Rougier, *op. cit.*, p. 363 *et seq.*; Weisse, *op. cit.*, pp. 83-89. The United States recognized the new Government of the Republic of Panama in 1903 without previously or concurrently recognizing the belligerency of either party.

<sup>58</sup> It should be noted that from the time of their recognition of the insurgent authorities as the Government of Spain, the states so recognizing were entitled to regard the established Government of Spain as being a government in rebellion against the Franco or Nationalist Government. From an international and non-partisan point of view, insurgents remain as such, and the established government remains the lawful government until the termination of the conflict brings about the final demise of the former established government and erects in its place the former insurgent authorities as the government of the state. For this reason, it has seemed proper to designate the existing established government as the Spanish Government, and to designate the Nationalists as the Insurgent authorities throughout this book. Attention may be called to succeeding pages in this Chapter where reference is made to the nomenclature adopted by the English Courts in dealing with Spain.

## BELLIGERENCY NOT RECOGNIZED BY FOREIGN STATES

In conclusion it may be said that the fact of insurgency was generally admitted, but that recognition of belligerency was withheld by foreign states.<sup>59</sup> Britain and France announced on November 24, 1938, that all foreign troops must be withdrawn from Spain before belligerent rights would be granted. As Italian forces still remained in Spain in February, 1939, when hostilities were suspended, recognition of belligerency was not extended either by these Powers or by others. This fact, however, was not allowed to embarrass the recognition of the Franco régime as the *de jure* Government of Spain, which took place generally during February and March, 1939. That active hostilities existed between two political entities was beyond question. No instance appears on record where belligerent status was so long opposed by such a concert of Powers when a civil strife had approximated the magnitude and general seriousness of the contemporary Spanish conflict.

Should belligerency have been recognized? General Franco, in his notes to the British Government of November 18, 1937, and of August 21, 1938, relating to the Plans for the Withdrawal of Volunteers and the Recognition of Belligerency,<sup>60</sup> maintained that he was entitled to be granted belligerent authority as of right. He recited that he had:

(a) The possession of, and full sway over, a portion of National Spanish territory which greatly exceeds that held by the enemy.

(b) A legal and regular Government which *de facto* exercises over said portion of territory the rights inherent in sovereignty.

(c) A regular land and air army, perfectly organized and subject to strict military discipline, which affords a guarantee of order and which is striving with undoubted success for the integrity of the country, respecting and causing to be respected, with the utmost scrupulousness, the laws and customs of warfare, and acting under the direction of a generalissimo on behalf of the nation and its government; and the existence of a navy which is conducted under the same conditions as the army and which controls territorial waters,

<sup>59</sup> A case may be made out that the belligerency of the insurgents was recognized by the Spanish Government through its attempted closures of ports and blockades. It must be observed, however, that any such recognition by the parent government does not create obligations for foreign states or involve recognition by them. See A. McNair, "The Law Relating to the Civil War in Spain," *op. cit.*, p. 477. See also Chas. Rousseau, "La Non-Intervention en Espagne," *Rev. de Dr. Intl. et de Législ. Comp.*, 1938, No. 3, pp. 510-520.

<sup>60</sup> *New York Times*, Nov. 24, 1937, and Appendix VIII-7.



both forces operating under a flag already recognized by many countries and respected eight years ago by the entire world without exception.

General Franco asserted that "No requirement for the enjoyment of belligerent rights is, therefore, lacking," and he demanded "that this right, which is the consecration of an undoubted fact, should be granted in all its fullness and not subject to conditions, since there is no question of a favor capable of discussion, but of a well-founded right."<sup>61</sup>

Numerous persons of repute in the legal profession, particularly in England, have argued that insurgents meeting the prerequisites set forth above are entitled as of right to have their position confirmed by a recognition of belligerency, and that foreign states are under legal compulsion to grant such status.<sup>62</sup> In the past belligerent status has usually been conferred under such circumstances. On the hypothetical question of whether in any given case it *must* be conferred once the fundamental tests have been fulfilled, the present writer agrees with Professor McNair, that those who have argued affirmatively "have not made out their case," and that the balance of evidence and juridical opinion is against their view. As concluded by Professor Garner, "recognition is a matter entirely within the discretion of foreign states in the sense that they are free to judge for themselves whether the struggle has attained the proportions of a war, and, if so, whether they can recognize it as such without impairing their own rights or prejudicing the general interests of the community of states." While recognition is the legal attestation of an established condition of existing facts, the decision as to whether it is to be accorded, and the method by which it is accomplished, are political questions decided by the political branch of each interested government, and intimately associated with national policy.

It is to be noted that a line of differentiation has been carefully drawn by states between the acquisition of *de jure* belligerent status in time of international war and in time of civil strife. Until recently, contestants in a public war between states were always treated as being in the proper possession of belligerent rights and privileges

<sup>61</sup> Appendix VIII-7. According to Mr. Eden, the British Government received a "reasoned claim" for recognition of belligerency from Franco in June, 1937. *Parliamentary Debates*, House of Commons, Vol. CCCXXV, p. 1172.

<sup>62</sup> Reviewed in J. W. Garner, "Recognition of Belligerency," *A.J.I.L.*, Vol. XXXII (1938), pp. 106-113; A. McNair, "The Law Relating to the Civil War in Spain," *Law Quarterly Review*, Vol. LIII (1937), p. 483.

from the moment a state of war came into existence, neutrality being declared by other states. In time of civil strife, on the other hand, the rule has been established by long practice that the contestants are not lawfully entitled to exercise toward foreigners and their property upon the high seas the rights and privileges of *de jure* belligerents until the foreign states concerned formally give them permission to do so. The significance of this distinction should be appreciated, for it tends to give third parties, rather than the contestants, the determination of whether war shall be lawfully conducted upon the high seas in such a way as to interfere with the rights of third parties.

An important phase of the action regarding non-recognition during the contemporary Spanish strife was its collective character. It is believed by many that war, wherever it may occur and whatever form it may take, must be the collective concern and business of the society of nations as a whole.<sup>63</sup> Wherever the disruption of the internal peace of one state threatens to affect or to destroy the peace between nations, the localization of the conflict, and its regulation upon the high seas and in the air space thereabove ought to be matters of international collaboration. The collective system of admitting insurgency, embargoing the exportation and shipment of arms as well as prohibiting the departure and transit of volunteers for armed service, of withholding the grant of belligerent rights, and of protecting non-Spanish vessels from unlawful attack may well constitute precedents of considerable usefulness in bringing war and its incidents more within the control of nations preserving the peace. If states are not yet prepared to determine the issue of recognition or non-recognition of belligerency in an international organization, as favored by Professor Wehberg of Geneva,<sup>64</sup> the practice during the Spanish strife has demonstrated that they are moving toward this end.

#### STATUS OF THE CONTESTING PARTIES AND THEIR PROPERTY BEFORE FOREIGN TRIBUNALS

Given admission of insurgency, non-recognition of belligerency, and non-recognition of the insurgent authorities as the *de jure* gov-

<sup>63</sup> Wehberg, *Civil War*, *op. cit.*, p. 163.

<sup>64</sup> Wehberg, *Civil War*, *op. cit.*, pp. 187-188.

ernment (save by a limited number of states), what, it may be asked, was the status of the two parties, their acts, and their property before foreign tribunals?

The position of the parties was well expressed in a letter of the British Foreign Office, incorporated in and made the basis of the decision of the High Court of Justice in the case of *The Arantzazu Mendi*.<sup>65</sup>

1. His Majesty's Government recognize Spain as a foreign sovereign State. 2. His Majesty's Government recognize the Government of the Spanish Republic now having its seat in Barcelona as the *de jure* Government of Spain. 3. No Government other than that referred to in the preceding subparagraph is recognized by His Majesty's Government as the *de jure* Government of Spain or any part thereof. 4. The Nationalist Government of Spain is a Government in conflict with the Government of the Spanish Republic established at Barcelona. It claims to be the Government of Spain and is seeking to overthrow the Government of the Spanish Republic and to establish its authority over the whole of Spain. 5. His Majesty's Government recognize the Nationalist Government as a Government which at present exercises *de facto* administrative control over the larger part of Spain. 6. His Majesty's Government recognize that the Nationalist Government now exercises effective administrative control over all the Basque Provinces of Spain. 7. His Majesty's Government have not accorded any other recognition to the Nationalist Government. 8. The Nationalist Government is not a Government subordinate to any other Government in Spain. 9. The question whether the Nationalist Government is to be regarded as that of a foreign sovereign State appears to be a question of law to be answered in the light of the preceding statements and having regard to the particular issue with respect to which the question is raised.

Following these views, and referring to the case of *The Gagara* which had dealt with an analogous question respecting the Estonian authorities in 1919,<sup>66</sup> the High Court held that the Nationalist Government was in law and for the purpose of the case, to be regarded as a foreign sovereign state, and entitled, as such, to immunity from legal process.<sup>67</sup>

Confusion characterizes the jurisprudence regarding the extra-territorial effect and recognition to be given to the juridical acts of the Spanish authorities. In the United States the Federal District

<sup>65</sup> Law Reports, 1938, Probate Div., p. 242.

<sup>66</sup> *Ibid.*, 1919, Probate Div., p. 95.

<sup>67</sup> The Courts of other states do not appear to have gone so far as the British Court in this connection.

Court in New York City in the case of *The Navemar*, refused to enforce a requisitioning decree of the Valencia Government, on the ground that it was penal in character and amounted to confiscation. The Court refused to accept the contention of the Spanish ambassador that as it was an act of a sovereign it was not to be questioned.<sup>68</sup> In England the opposite view was taken by the High Court of Justice, the Court of Appeals, and the House of Lords in the case of *The Cristina*.<sup>69</sup> The Law Lords ruled that it was well established in both international and in English law that a sovereign was not to be impleaded against his will, and that the courts would not seize or detain property belonging to the sovereign, or sit in judgment of the sovereign's acts. In *Banco de Bilbao v. Rey*,<sup>70</sup> and in *The Arantzazu Mendi*,<sup>71</sup> the Court of Appeals and the High Court of Justice respectively held, however, that where two authorities claimed jurisdiction over property, the party having recognized *de facto* rule over the corporate domicile was to be regarded as the lawful sovereign and entitled to receive respect for its acts and decrees to the exclusion of a recognized *de jure* government not having control of the locus. In France two cases on appeal are recorded, mutually contradictory. In *Rousse et Maber v. Banque d'Espagne*,<sup>72</sup> the Poitiers Court upheld attachments of Spanish Republican property and refused to accept the argument that confiscation had vested ownership in the sovereign and hence entitled the property to immunity abroad. The Rouen Court, however, in *L'Etat d'Espagne et Banque d'Espagne v. Banque de Bilbao et Al.*,<sup>73</sup> adopted the immunity contention, notwithstanding the fact that the property in question which was sought by the Spanish Embassy in Paris emanated from Bilbao, then in control of the Nationalists. A similar division of determination appears to have occurred in the courts of The Netherlands.<sup>74</sup> The High Court of Norway, on the other hand, is reported to have taken an entirely different position, maintaining that it was not competent to decide the ownership of

<sup>68</sup> *Compania Española de Navegación Marítima, S. A., v. Crespo et al.* 18 Federal Supplement, pp. 153-158.

<sup>69</sup> Law Reports, 1938, Appeal Cases, Pt. IV, pp. 485-523.

<sup>70</sup> *Ibid.*, 1938, Vol. II, Kings Bench, pp. 176-197.

<sup>71</sup> *Ibid.*, 1938, Probate Div., pp. 233-249.

<sup>72</sup> J. B. Sirey, *Recueil Général des Lois et des Arrêts*, No. 1, 1938, Pt. II, pp. 18-23.

<sup>73</sup> *Ibid.*, pp. 23-24.

<sup>74</sup> *Grotius Annuaire*, 1938, pp. 116-117.

a Spanish vessel claimed by both parties through requisition decrees.<sup>75</sup>

The decisions referred to above may be taken as reflecting a continuing confusion regarding the juridical implications of the status of insurgency. These conflicting views are not likely to be readily eliminated by allowing the law to be developed exclusively through the judicial process. The subject might properly be regulated and agreement promoted through some multilateral instrument, on the pattern of the Pan-American conventions relating to the Rights and Duties of States, and to the Duties and Rights of States in the Event of Civil Strife.

### CONCLUSIONS

In conclusion, the law accepted by the general body of states during the Spanish civil strife, as evidenced by public pronouncements and international practice, may be summarized as follows:

*First*, the decision as to whether belligerent rights are to be accorded to parties in a civil disturbance rests originally and ultimately with the political department of each foreign state.

*Second*, no legal obligation exists compelling any foreign state to recognize belligerency at any time or stage of a civil disturbance.

*Third*, recognition may be withheld indefinitely by a group of states deciding to act thus as a means of safeguarding their own collective interests and/or the general peace between nations.

*Fourth*, states may singly or coöperatively embargo the exportation and shipment of arms, ammunition and materials of war, as well as prohibit the departure or transit of volunteers bound for service with the contesting parties, without thereby violating international law or conferring recognition of belligerency.

*Fifth*, states may institute international naval patrols to protect their shipping upon the high seas from interference by the contesting parties not possessing belligerent rights and acting in a manner contrary to accepted principles and rules of international law. The establishment of such patrols does not amount to a recognition of belligerency.

*Sixth*, whereas belligerency is a fact, "recognition of belligerency" involves more than bare acknowledgment of the fact. It bears in

<sup>75</sup> Reported in the *New York Times*, July 8, 1938.

its train a legal permission not previously existing, regardless of any facts, for the recognized party to exercise all of the rights and privileges of a belligerent in international war with respect to subjects of the recognizing state and their property, and it necessitates the adoption of the legal status of neutrality by the state conferring recognition of belligerency.

Notwithstanding the refusal of the Powers to grant belligerent status to the Spanish contestants, the condition of affairs prevailing in Spain and in the waters adjacent to it were publicly designated as "civil war" in official pronouncements by highest government officials and in the legal measures adopted by many of the states participating in the Non-Intervention system.

## CHAPTER II

### INTERFERENCE WITH FOREIGN SHIPPING

AMONG the problems most frequently arising in connection with insurrections and civil strife are those relating to the status of foreign vessels in the areas of hostilities, and to the activities of the armed forces of the contestants in relation thereto.<sup>1</sup> According to international rules gradually evolved during the nineteenth century and generally enforced in time of civil disturbance, contending factions enjoy the right to control the movements and activities of foreign shipping within their territorial waters, but are not legally entitled to interfere with foreign vessels upon the high seas unless the states having jurisdiction over such vessels have recognized the belligerency of the contestants.<sup>2</sup> Control within territorial waters does not, however, authorize the contestants to make foreign vessels therein the object of attack or bombardment, unless they are in the direct line of fire and fail to remove upon warning, or are rendering active aid and service to the armed forces of the enemy.

Notwithstanding the reiteration of these rules on numerous occasions during the contemporaneous civil strife in Spain,<sup>3</sup> and in spite of consistent protest by the states concerned, extensive interference with foreign shipping on the high seas, and bombardment of such shipping within territorial waters continuously occurred.<sup>4</sup> Interference on the high seas was carried out in four ways: by surface war vessels stopping foreign vessels for visit and search according to the customary methods of naval practice; by the sowing of auto-

<sup>1</sup> See N. J. Padelford, "Foreign Shipping During the Spanish Civil War," *A.J.I.L.*, Vol. XXXII (1938), pp. 264-279, upon which this chapter is based.

<sup>2</sup> G. G. Wilson, "Insurgency and International Maritime Law," *ibid.*, Vol. I (1907), p. 54; G. G. Wilson, *N.W.C.*, 1902, pp. 72, 79-83; *ibid.*, 1904, p. 39; *ibid.*, 1907, pp. 136-137; *ibid.*, 1912, p. 20; *ibid.*, 1935, p. 82; N. J. Padelford, "International Law and the Spanish Civil War," *A.J.I.L.*, Vol. XXXI (1937), p. 226 *et seq.*; Moore, *Digest*, Vol. II, pp. 1085-1086, 1089, 1112, 1118-1120; Weisse, *op. cit.*, pp. 45, 61, 222.

<sup>3</sup> See statements quoted in *New York Times*, Aug. 21, Nov. 24, 26, 1936; March 24, April 2, 13, May 2, July 16, Aug. 27, 1937.

<sup>4</sup> See Appendix XV for list of instances of interference together with particulars.

matic contact mines; by unwarned bombings from aircraft; and by unwarned submarine torpedoings.

#### VISITATION AND SEARCH BY WAR VESSELS

The first type of interference involved the visitation and search of foreign vessels, together with forced deviation into Spanish ports for examination and confiscation of cargo. A tabulation of the instances of such action reported to have occurred during the first two years of the strife is impressive.<sup>5</sup> It is probable that the list is incomplete, as insurgent armed vessels constantly patrolled the Straits of Gibraltar and interfered extensively with the shipping of the smaller Powers not having naval vessels of their own in the vicinity.<sup>6</sup> The cases reported group themselves into two categories: those in which the interference first took place outside of the three-mile limit, and those in which it transpired inside of that line. Where the interception, coercion, or forced deviation commenced outside of the three-mile limit, it must be ruled to have been unlawful, in view of the fact that belligerent rights were not accorded to either party. Such objection may not be raised against similar action commencing within the three-mile belt, where the amount of force exerted against the foreign vessel in question did not exceed the bounds of propriety.<sup>7</sup> Cargoes taken out of or seized from foreign vessels apprehended outside of territorial waters and forced to deviate into a Spanish port contrary to their route must be held to have been unlawfully taken, regardless of the character of the goods

<sup>5</sup> See Appendix XV-1.

<sup>6</sup> Rousseau states that 151 foreign vessels were arrested by the insurgent authorities up to July 31, 1938. "La Non-Intervention en Espagne," *Rev. de Dr. Intl. et de Législ. Comp.*, 1938, No. 3, p. 524.

<sup>7</sup> *Parliamentary Debates*, House of Commons, Vol. CCCXXVI, pp. 1760, 2176. In connection with the situation off Bilbao, it was said by British officials that the British Government did not admit the right of Spanish warships outside of the 3-mile limit to fire on British ships inside that limit, although they would accept a capture properly made; that they would not recognize the right to pursue a British vessel after the latter left territorial waters; that British warships would not attempt to release or recapture a British merchant vessel captured within the 3-mile limit but escorted out of that limit onto the high seas en route to a Spanish port. *Ibid.*, Vol. CCCXXII, p. 1726; Vol. CCCXXVI, pp. 1488-1489, 1757, 1760, 1762.

Jan. 22, 1939, the insurgent authorities created a special tribunal "to determine the validity of ship seizures and confiscation of cargoes in Spanish waters." As stated in a dispatch to the *New York Times*, "its purpose was described officially 'to assure the legitimacy of acts and guarantee the interests' of insurgent Spain." *New York Times*, Jan. 23, 1939.



or of the nationality of the owners. Goods taken from foreign vessels apprehended after having voluntarily or purposely entered Spanish waters must be regarded as having been properly seizable if they were the property of Spaniards, or materials useful to the enemy in the conduct of hostilities.

All attempts on the part of the Spaniards to obtain legal sanction for visitation, search and seizure upon the high seas, and to obtain foreign acceptance of announced and *de facto* blockades,<sup>8</sup> were met with protest and refusal. Interference upon the high seas was branded "piracy," and the naval vessels of many Powers were ordered to afford armed protection to merchant vessels entitled to fly their flag so long as the latter remained outside of Spanish territorial waters. In at least one instance, reprisals were resorted to when the authorities of one of the contestants refused to release a foreign vessel and its cargo and passengers.<sup>9</sup>

<sup>8</sup> *New York Times*, Aug. 10, 12, Nov. 20, 21, 1936; *London Times*, April 13, 15, 20, 21, 22, 24, 27, 29, Nov. 29, 30, Dec. 1, 8, 1937. Following their failure to secure foreign acceptance of the last announced blockade, the insurgents issued an important statement on Dec. 21, 1937, concerning their position regarding foreign shipping, in which it was affirmed that foreign vessels on the high seas would not be seized as for the violation of a blockade, and that they would not be interfered with provided they did not carry contraband, *London Times*, Dec. 22, 1937. It was not indicated in what manner the insurgent patrol vessels on the high seas were to become informed of the fact that a foreign merchant vessel carried or did not carry contraband.

March 15, 1937, Sir Samuel Hoare said in the House of Commons, "the reports received have confirmed the view that the Spanish insurgent authorities have established an effective *de facto* blockade of Bilbao," *Parliamentary Debates*, House of Commons, Vol. CCCXXII, p. 1411. Notwithstanding this, the British consistently refused to regard the blockade as legal. *Ibid.*, p. 1048.

<sup>9</sup> Germany took reprisals against the Spanish Government for the refusal of the latter to release part of the cargo and some of the passengers of the steamer *Palos*. This case is discussed at some length in N. J. Padelford, "International Law and the Spanish Civil War," *A.J.I.L.*, Vol. XXXI (1937), pp. 237-242.

French naval instructions of April 22, 1937, provided:

"On being informed that a merchant ship has been stopped, diverted from her course, or attacked at sea, the authorities are to send warships or seaplanes to her assistance. Any warship is to respond immediately to a request for help. The warship must inform the aggressor that she intends to protect the merchantman, place herself cleared for action, between the two ships, order the merchantman to proceed, and escort her on her way. If the aggressor continues operations and fires on the merchantman the warship must at once attack the aggressor with all the means at her command." *London Times*, Aug. 23, 1937.

"The right of belligerents cannot be invoked under present circumstances. The challenge and forced deviation by Spanish warships of French merchant vessels navigating more than three miles offshore are and will remain contrary to international law and the principle of freedom of the seas.

"All French war vessels have consequently received orders to aid French merchant

In view of the fact that neither party in Spain was accorded belligerent rights, it made no difference whether the methods of visitation and search at times met the requirements in the Spanish naval instructions, or that World War precedent provided some basis for forcing a merchantman to deviate from its normal course for examination and search. So long as belligerent rights were not possessed by the Spaniards, no right existed to interfere in any way, shape, or manner with foreign vessels, their cargoes or personnel upon the high seas.

### THE USE OF AUTOMATIC CONTACT MINES

The sowing or sighting of automatic contact mines began to appear in marine notices as early as September, 1936, and continued

ships stopped on the high seas and to oppose, by armed force if need be, any search or deviation.

"Merchant ships should permanently carry night and day nationality signs sufficiently prominently so that there can be no doubt of their nationality. To obtain aid they need only radio their position to 'all French warships.' The nearest one will respond and come at once to their aid.

"As the same acts of assistance cannot normally be rendered in Spanish territorial waters to prevent arrest or visit, it is recommended to our merchant ships to navigate far outside of such waters.

"In French territorial waters any warlike action or police activity by Spanish ships will not be tolerated regardless of the flag flown by the ship which is the object of the action. Every action of any kind violating international law will expose the guilty vessel to seizure by our warships or coastal defenses charged with enforcing respect, even if by use of force, for our complete sovereignty in these waters." *Le Temps*, April 3, 1937.

The Spanish Naval Instructions on the Right of Visit and Search provide:

"1. Right of visit can only be exercised by belligerents; hence it can evidently be only resorted to during international conflicts by one or other of the states at war, as also during internal civil or insurrectionary wars, when one or more foreign Powers have recognized the insurrectionary party as belligerents. In such circumstances, right of visit can be exercised by the mother country, but it is restricted to the merchant vessels of the nation or nations who have given this recognition, and who are for such reasons in the position of neutrals.

"2. In accordance with the position laid down in the preceding article, ships of war and merchant vessels of the belligerents, when legally armed either as auxiliary cruisers of their navy or as privateers, if and when they are authorized, may, in their own territorial waters, or those under the jurisdiction of the enemy, or in the open seas, detain such merchant vessels as they meet with in order to verify the legitimacy of their flag, and, if neutrals and proceeding to a port of the other belligerent, the nature of their cargo.

"3. Seas subject to the sovereign jurisdiction of neutral Powers are absolutely inviolable; right of visit may not, therefore, be resorted to within them, even if it be alleged that it was attempted to exercise such right in the open sea, and that, on chase being given, and without losing sight of the vessel pursued, the latter penetrated into neutral waters." *United States Foreign Relations*, 1898, p. 775.

These instructions are still in force for the Spanish Navy, according to a communication received by the author from the Spanish Embassy in Washington, dated April 6, 1938.

during the hostilities.<sup>10</sup> Notwithstanding the dispersal (or alleged dispersal) of large numbers of mines on the high seas in the Mediterranean and the Bay of Biscay, only one foreign vessel is known to have been damaged by contact with a mine outside the three-mile limit,<sup>11</sup> and only three foreign vessels damaged or destroyed inside that limit.<sup>12</sup> While some of the mine fields reported may have been fictitious, the fact remains that mines were planted and floating upon the seas and that foreign ships and lives were not only endangered but were actually injured and destroyed. For all damages the Spaniards were held "strictly accountable."<sup>13</sup> The situation at one time was deemed so serious that the British Government contemplated mine-sweeping outside the three-mile limit.<sup>14</sup>

The first use of mines in time of civil warfare seems to have been in the Mississippi River operations during the American Civil War.<sup>15</sup> During the Spanish Civil War in 1873 it was reported that mines were laid at the mouth of the harbor of Bilbao. When asked whether the British Government would join that of France in preventing the laying of mines, Lord Lyons, British Ambassador to France, replied: "His Majesty's Government considered that as it would take no part in the internal affairs of Spain, His Majesty's ships would not be warranted in interfering respecting torpedoes further than to require that due notice should be given so that British ships might receive timely warning . . ." <sup>16</sup> The opposite policy was followed during the Brazilian insurrection of 1893 when the foreign naval commanders stationed at Rio joined in demanding a cessation of hostilities while they searched the harbor for such de-

<sup>10</sup> Such reports were contained in the Notices to Mariners issued by the United States Hydrographic Office; the bulletins of the same title issued by the British Admiralty; the French *Avis aux Navigateurs*; the Spanish loyalist *Avisos a los navegantes. Publicación semanal. Instituto y observatorio de Marina, Servicio hidrografica de la Armada*; the Spanish rebel *Publicación provisional de avisos a los navegantes. Servicio hidrografico de la Armada. Buque-hidrografica "Tofino" de la flota republicana*.

<sup>11</sup> H.M.S. *Hunter* on May 13, in the Mediterranean at 36° 43½' N., 2° 28½' W. *Parliamentary Debates*, House of Commons, Vol. CCCXXX, p. 1139; *London Times*, May 14, 1937.

<sup>12</sup> *New York Times*, Feb. 26, Mar. 2, 5, 1937.

<sup>13</sup> *Ibid.*, April 15, 1937. June 23, 1937, Mr. Eden said that General Franco's "attention has been called" to article 2 of the 8th Hague Convention regarding the laying of mines off enemy ports with the sole object of intercepting commercial navigation. *Parliamentary Debates*, House of Commons, Vol. CCCXXV, p. 1175.

<sup>14</sup> *London Times*, April 14, 1937.

<sup>15</sup> A. T. Mahan, *The Navy in the Civil War*, Vol. III, pp. 116, 118, 231, 232.

<sup>16</sup> Lord Lyons to the British Office, Aug. 12, 1873. British Archives, F. O. 72/1392.

vices.<sup>17</sup> In the Cuban insurrection of 1898, the United States demanded satisfaction from Spain on the allegation that the United States battleship *Maine* had been blown up by a submarine mine in the harbor of Havana.<sup>18</sup> Mines were laid in the Gulf of Salonika during the Greek revolt of 1935, but no foreign vessels were damaged.<sup>19</sup>

In spite of the efforts of writers on international law and of the Hague Convention of 1907 to condemn the uncontrolled employment of automatic contact mines,<sup>20</sup> these instruments of destruction have been generally utilized by belligerents in all of the international wars since 1900, notice being customarily given to neutrals concerning the general areas subjected to mining.

In the Plan for Withdrawal of Volunteers and Recognition of Belligerency adopted by the Non-Intervention Committee in July, 1938, but not accepted by the Spanish authorities, an undertaking was included by which the latter were to agree in advance not to place mines in such way as to endanger legitimate shipping routes, whether on the high seas or in territorial waters.<sup>21</sup>

It is difficult to deny that the Spaniards had the right to anchor automatic contact mines within their territorial waters even if their belligerency were not, recognized, provided the mining operations were not exclusively designed to prevent foreign vessels from obtaining access to Spanish ports, and provided they gave adequate notice to and established reasonable safeguards for foreign vessels.<sup>22</sup> Con-

<sup>17</sup> *U. S. For Rel.*, 1893, p. 75.

<sup>18</sup> *U. S. For. Rel.*, 1898, p. 1036.

<sup>19</sup> *New York Times*, March 5, 7, 1935.

<sup>20</sup> P. Fauchille, *Traité de droit international public* (Paris, 1922), Sec. 1316(2); J. W. Garner, *International Law and the World War* (London, 1920), Vol. I, pp. 336, 353; Hall, *International Law*, pp. 640-641; Hyde, *International Law*, Vol. II, p. 414; Hershey, *Essentials*, p. 643 n.; Axel Møller, *International Law in Peace and War* (Copenhagen, 1935), Vol. II, p. 188; N.W.C., 1913, p. 147; *ibid.*, 1914, p. 112; Oppenheim, *International Law*, p. 190; A. Rolin, *Le Droit Moderne de la Guerre* (Brussels, 1921), Vol. II, Secs. 635-42; J. B. Scott, *Resolutions of the Institute of International Law* (New York, 1916), pp. 167, 178; C. H. Stockton, "The Use of Submarine Mines and Torpedoes in Time of War," *A.J.I.L.*, Vol. IX (1915), p. 277; editorial comment, "Mines, Submarines and War Zones," *ibid.*, p. 461; N.W.C., 1914, pp. 100-138; *ibid.*, 1933, pp. 99-110.

<sup>21</sup> See Chapter III, p. 109.

<sup>22</sup> It may be observed that none of the reports mentioned the existence of mines off Cape Creus where three foreign vessels were seriously damaged. The comprehensive statement issued by the insurgent authorities on Dec. 21, 1937, was reported to have said that "the mines laid in the neighborhood of the Republican ports are directed

sidering, however, the inability of the contact mine to distinguish between friend and foe, and the ease with which such devices may be swept away from their moorings by heavy seas, there is no question but that the foreign Powers whose vessels were damaged were lawfully entitled to demand from the Spanish authorities reparation and satisfaction for all losses.

#### AERIAL BOMBARDMENT AND CONTROL

A third type of interference with foreign shipping was executed by means of aerial bombardment. An almost incredible number of foreign merchant vessels and warships were subjected to direct bombardment from aircraft without any warning and without efforts having been made to visit and search the foreign vessels either where located or at some adjacent port before subjecting them to attack.<sup>23</sup> In view of the fact that belligerency had not been recognized and that therefore absolutely no right of interference existed at all, it is immaterial that heretofore the Powers have not found it possible to conclude an international convention governing the conduct of belligerent aircraft toward foreign vessels.<sup>24</sup> Long-standing naval instructions forbid all Spanish war vessels even in time of war to direct armed force at a neutral vessel until normal methods of summons have proved ineffective in bringing a vessel to, for visitation and search.<sup>25</sup> Protests and notes having failed to produce a cessation of such attacks, orders were given to the naval vessels of Britain, France, Germany and Italy to fire upon aircraft bombing their respective merchant vessels outside the three-mile limit.<sup>26</sup>

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against Republican warships and merchant ships and cannot be regarded as being aimed specifically against merchantmen." *London Times*, Dec. 22, 1937. Rousseau maintains that no right to place mines existed in the absence of belligerent rights. "La Non-Intervention en Espagne," *op. cit.*, p. 538.

<sup>23</sup> See Appendix XV-2.

<sup>24</sup> Efforts to reach such a convention were made at Washington in 1922, The Hague in 1923, Havana in 1928, and London in 1930. See Rousseau, "La Non-Intervention en Espagne," *op. cit.*, pp. 493-510. See also M. LeGoff, "Les Bombardements aériens dans la guerre Civile espagnole," *Revue de Droit International Public*, Sept.-Oct. 1938, pp. 581-606.

<sup>25</sup> See Art. 4, Spanish Naval Instructions, *U. S. For. Rel.*, 1898, pp. 775, 776; herein Appendix X.

<sup>26</sup> *New York Times*, July 23, 1936; Jan. 18, May 28, Aug. 27, 1937.

## THE FOUR-POWER AGREEMENT OF JUNE 12, 1937

Following the unprovoked and unlawful bombing of British, German and Italian naval patrol vessels anchored in Spanish waters on May 24, 26, and 29, 1937, by Valencia airplanes,<sup>27</sup> two agreements were reached by the four western European Powers for safeguarding their warships and for consultation in the event of further attacks. The first agreement was designed to effect an undertaking between the four Powers on the one hand, and each of the Spanish parties acting separately, on the other hand. According to the *London Times*, the substance of this agreement was as follows:

(a) That the two parties should be asked to give a specific assurance that they will respect foreign warships on the high seas and elsewhere, and will take steps to see that their naval and air forces give effect to this assurance.

(b) That, in order to avoid accidental attacks on or damage to foreign warships participating in the patrol when lying in the ports of either party, the two parties should be asked to come to an agreement with the four Powers on a list of Spanish ports to be made available for use as bases for their patrol ships and on a definition of the safety zones which should be established in those ports.

(c) That the two parties should be informed that any infraction of the aforesaid assurances or any attack upon foreign warships responsible for the naval patrol will be regarded by the four Powers participating in the control as a matter of common concern; and that the four Powers, irrespective of any immediate measures of self-defence considered necessary by the forces of the Power actually attacked will immediately seek agreement among themselves concerning steps to be taken in concert, taking into consideration the views which the Government concerned is naturally entitled to express as to further appropriate measures.<sup>28</sup>

The second agreement related to the procedure of consultation, and ended with the provision that "if, failing agreement through consultation on concerted action, the Power attacked decides to take

<sup>27</sup> See *London Times*, May 15, 17, June 1, 4, 9, 18, 1937, for official documents and statements bearing upon the attacks. See letter of Spanish Government to the Secretary-General of the League of Nations, *Official Journal*, July, 1937, pp. 602, 603. The preponderance of evidence indicates that the Spanish contentions contained in this letter were baseless.

<sup>28</sup> *London Times*, June 16, 1937. The Soviet Government protested against the Four Power Agreement, claiming all questions connected with the Patrol Scheme should be handled by the Non-Intervention Committee. Text in *Le Temps*, June 11, 1937. The text of Lord Plymouth's reply may be found in *Le Temps*, June 12, 1937.

independent measures, the other Powers will not share in the responsibility for such action and a new situation will have arisen necessitating reconsideration" of the whole matter.

Unfortunately the June 12 agreements presently came to naught when the four Powers failed to come to a common viewpoint on the line of action to be taken in reply to a torpedo attack on the German cruiser *Leipzig*,<sup>29</sup> and in view of the rejection by the Spanish Government of the guarantee proposals.<sup>30</sup>

#### THE NYON SUPPLEMENTARY AGREEMENT OF SEPTEMBER 17, 1937

Further aerial bombings having occurred during the summer of 1937, another attempt was made to cope with the problem at the Nyon Conference in September.<sup>31</sup> Following the conclusion of the arrangement regarding submarines, a supplementary agreement was signed by the ten states represented, which provided that any naval patrol vessel engaged in the protection of merchant shipping in conformity with the Nyon Arrangement, witnessing an aerial attack

<sup>29</sup> *Ibid.*, June 21, 22, 1937. The German Government demanded the staging of a united naval display in Spanish territorial waters off Valencia, together with delivery of all Spanish submarines to the four Powers for neutralization for the balance of the strife. The customarily well-informed diplomatic correspondent of the London *Times* wrote on June 23 that none of the German proposals were "discussed in detail," that there was never "an approach to an agreement on the naval demonstration," and that the submarine proposition "never came within the scope of practical discussion." The British and French proposed instead merely the sending of a protest to Valencia and the institution of an international commission of inquiry to examine the facts of the case.

In terminating the Four-Power Agreement and withdrawing from the International Naval Patrol off Spain, the German Government advised the British that: "The German Government, after being notified by the attacks on the cruiser *Leipzig* on June 15 and 18, have immediately informed the Powers engaged in the Spanish sea control that they are not willing to expose their naval forces, while entrusted with an international task, to further target practice off Red Spain.

"The German Government have limited to a minimum the guarantee which had to be asked for the safety of the German ships in requesting a naval demonstration of the four control Powers in order thus to express a definite and obvious solidary warning.

"Since the British and French Governments are not ready to agree even to this minimum request, the German Government regret to state that among the control Powers that spirit of solidarity which is an indispensable condition for the execution of the common international task is lacking. The German Government have therefore decided to withdraw finally from the Control Scheme." London *Times*, June 24, 1937. The Italian note expressed the same views.

From all available information, the German proposals and final decision seem to have been moderate and reasonable. It is to be regretted that they were not more seriously considered by the British and French governments.

<sup>30</sup> Text in *L'Europe Nouvelle*, Oct. 9, 1937, p. iv.

<sup>31</sup> The invitations to the Nyon Conference provided for discussion of both submarine and aerial attacks. Text in London *Times*, Sept. 7, 1937.

upon any non-Spanish merchant vessel in violation of the rules of attack on merchant vessels laid down for submarines in the 1930 London Naval Treaty, should open fire upon the aircraft.<sup>32</sup> This agreement differed considerably from the earlier one of June 12, inasmuch as no guarantee was asked of the Spanish contestants, no provision was made for consultation, and a special International Naval Patrol was created for the protection of all non-Spanish merchant vessels against unlawful attacks.

Certain features of the Nyon Supplementary Agreement require underlining. According to Paragraph One, this instrument was made an "integral part" of the arrangement regarding submarines. By the terms of the submarine arrangement, British and French naval vessels were not authorized to engage in protective duty in the Adriatic and Tyrrhenian Seas. In the Supplementary Agreement these patrol vessels were ordered to open fire upon aircraft attacking merchant vessels anywhere in the "Mediterranean." In view of the political considerations which lay behind the Nyon Conference, it seems probable that the term "Mediterranean" was to be understood as not including the Adriatic and Tyrrhenian Seas.<sup>33</sup> Differentiation was made between the protective measures which might be adopted toward aircraft and surface vessels and those to be taken

<sup>32</sup> *League of Nations Doc. C.409.M.273.1937.VII*. Full text reproduced here in Appendix IX. The most important provisions read:

"I. The present Agreement is supplementary to the Nyon Arrangement and shall be regarded as an integral part thereof.

"II. The present Agreement applies to any attack by a surface vessel or an aircraft upon any merchant vessel in the Mediterranean not belonging to either of the conflicting Spanish parties, when such attack is accompanied by a violation of the humanitarian principles embodied in the rules of international law with regard to warfare at sea, which are referred to in Part IV of the Treaty of London of April 22nd, 1930, and confirmed in the Protocol signed in London on November 6th, 1936.

"III. Any surface vessel, engaged in the protection of merchant shipping in conformity with the Nyon Arrangement, which witnesses an attack of the kind referred to in the preceding paragraph shall:

"(a) If the attack is committed by an aircraft, open fire on the aircraft;

"(b) If the attack is committed by a surface vessel, intervene to resist it within the limits of its powers, summoning assistance if such is available and necessary.

"In territorial waters each of the Participating Powers concerned will give instructions as to the action to be taken by its own war vessels in the spirit of the present Agreement."

<sup>33</sup> No convention has been adopted delimiting the geographical extent of the Mediterranean. See "Limits of Oceans and Seas," International Hydrographic Conference, *Special Publication No. 23*, Monaco, 1928; *Report of the Proceedings of the First Supplementary International Hydrographic Conference held at Monaco, 1929* (Monte Carlo, 1929), pp. 187-189.



against submarines. According to the submarine arrangement, submarines seen or believed to have been guilty of torpedoing merchant vessels without warning were to be counter-attacked and "if possible destroyed." Against aircraft actually seen to have attacked a merchant vessel without warning and justification, the patrol vessels were directed to "open fire." Against surface warships seen to be attacking non-Spanish merchant vessels, the patrol vessels were ordered to "intervene to resist" further attack. Patrol vessels were given no mandate by the Supplementary Agreement to counter-attack aircraft or surface vessels with a view to their complete destruction. No provision was made for the capture of any offending craft or their personnel.

No mention was made in either of the documents signed at Nyon of cases of merchant vessels being ordered under threat of force to deviate from their regular course into Spanish territorial waters for visitation and search. While controversy has prevailed over the right of aircraft and submarines to require deviation in time of public war,<sup>34</sup> there would appear to be no doubt but that deviation under duress by a craft belonging to or in the employ of the Spanish contestants was unlawful under the prevailing conditions, and hence to be resisted by the International Naval Patrol, even though no actual bombing, shelling, or torpedoing had been or was taking place. The preamble to the submarine arrangement expressly recited: "whereas without in any way admitting the right of either party to the conflict in Spain to exercise belligerent rights or to interfere with merchant ships on the high seas even if the laws of warfare at sea are observed . . ."

#### FOREIGN VESSELS WITHIN TERRITORIAL WATERS

Throughout the first two years of the strife many foreign vessels unloading cargo at docks and anchored in the harbors of ports controlled by the loyalist authorities were damaged or struck by bombs from insurgent aircraft.<sup>35</sup> November 17, 1936, General Franco in a

<sup>34</sup> General Report, Conference of Jurists, 1923, *British Parliamentary Paper*, Cmd. 2201, pp. 43-48; N.W.C., 1924, pp. 136-142; J. B. Moore, *International Law and Some Current Illusions* (New York, 1924), pp. 202-206; J. M. Spaight, *Air Power and War Rights* (London, 1924), pp. 465-473; N.W.C., 1930, p. 65.

<sup>35</sup> See J. M. Spaight, "The Bombing of Harbours and Shipping Therein," *The Nineteenth Century*, Vol. CXXIV (1938), pp. 270-278.

note to the Powers, announced his intention of stopping the traffic in war supplies with Barcelona, and warned "all foreign ships anchored in that harbor of the desirability of abandoning it in a very short time to avoid the consequences of damage which, unintentionally, might be caused to them on the occasion of the military action referred to of which no further warning will be given."<sup>36</sup> Negotiations were commenced between Great Britain and the insurgent authorities for safe-anchorage zones in Barcelona and Valencia.<sup>37</sup> These were successful,<sup>38</sup> and ships anchored in the agreed zones were generally not molested during 1937, although foreign vessels at other ports were subjected to bombing.<sup>39</sup> In a statement concerning foreign shipping, issued December 21, 1937, the insurgent authorities gave notice of a change in policy, and of the termination of the safe-zones for merchant ships in government-controlled ports. Paragraphs 4 and 5 of the notice stated:

Operations against Republican harbors will not be directed against foreign merchantmen engaged in legitimate trade. If, however, foreign vessels anchor near military objectives, the Nationalist Government cannot hold themselves responsible for any damage suffered by them. The safety zones at Valencia and Barcelona will in future be regarded as free only to foreign warships, and the safety of merchantmen anchored in them cannot be guaranteed.

The Nationalist Government warn ships entering Republican harbors that they are running a grave risk not only from mines but also from military operation.<sup>40</sup>

Subsequent to the issuance of this announcement, systematic bombing of the ports under the control of the loyalists was commenced. During the spring of 1938, large numbers of foreign vessels, especially British-registered, were damaged or destroyed in these raids. Much embarrassment and concern was caused to the British Government by these cases, particularly as many of the vessels which were hit while flying British flags formerly were of foreign registry and ownership,<sup>41</sup> many were under charter to the

<sup>36</sup> *London Times*, Nov. 20, 1936.

<sup>37</sup> *Ibid.*, Nov. 21, 25, 1936.

<sup>38</sup> *Parliamentary Debates*, House of Commons, Vol. CCCXVIII, p. 823.

<sup>39</sup> See Appendix XV-2.

<sup>40</sup> *London Times*, Dec. 22, 1937.

<sup>41</sup> See statements of the President of the Board of Trade to the House of Commons in *Parliamentary Debates*, House of Commons, Vol. CCCXXVI, pp. 947-950, 2832-2833.

Spanish Government,<sup>42</sup> and many were engaged solely in the Spanish trade and making exorbitant war-time profits.<sup>43</sup> Notwithstanding constant pressure from the shipowners and from the political opposition in England, the British Government resolutely adhered to a correct policy, refusing to afford such vessels armed protection within the three-mile limit. Protests and demands for compensation were made in all cases where the bombing appeared to be arbitrarily and intentionally directed at British vessels not unloading war materials and not anchored alongside of legitimate military objectives.<sup>44</sup> Where damage to foreign vessels appeared to be incidental to the bombing of military objectives, including port works, the view was held and quite properly, that foreign vessels entering areas known to be subject to hostilities undertook such voyages at their own risk.

<sup>42</sup> Mr. Cooper remarked in the House of Commons on July 22, 1937, "make no doubt about it, these ships, every one of them, are performing invaluable services to the Spanish Government. They are volunteers as much as any of those volunteers from Italy, Germany, Great Britain, and France who are alleged to be fighting on either side. They are taking part in the war, and can they really expect that the British Navy will see them safe to harbor?" *Parliamentary Debates*, House of Commons, Vol. CCCXXVI, p. 2577. See also statement of the President of the Board of Trade on July 27, 1937, regarding the charter of British vessels to the Spanish Government. *Ibid.*, pp. 2832-2833. See editorial in *London Times*, June 10, 1938.

<sup>43</sup> See article by the diplomatic correspondent of the *London Times* in the issue of June 11, 1938; editorial in issue of June 28; and statement of Mr. Chamberlain in House of Commons, July 2, *ibid.*, July 3, 1938.

<sup>44</sup> In answer to a question whether the British Government recognized the right of the constantans to bomb merchantmen in port, Mr. Eden said on Feb. 9, 1938, in the House of Commons, "Certainly not." "We have made it clear more than once that we hold ourselves free to hold whichever party may be concerned responsible for any damage done within territorial waters." *Parliamentary Debates*, House of Commons, Vol. CCCXXXI, pp. 1016, 1516.

On June 14, 1938, the Prime Minister stated: "The result of further and detailed examination by His Majesty's Government has been to show that effective protection cannot be guaranteed to ships trading with ports in the war zone while they are in territorial waters unless this country is prepared to take an active part in the hostilities.

"In the opinion of His Majesty's Government they would not be justified in recommending such a course, which might result in the spread of the conflict far beyond the present limits. They must, therefore, repeat the warning they have already given to British shipping on November 28 and 29 last, that while they continue to afford protection as hitherto to ships on the high seas, ships entering ports are liable at any time to be the object of military operations and attack [and] must do so at their own risk.

"At the same time it is impossible that attacks, frequently involving loss of life and sometimes apparently deliberate, on British ships, can be repeated without serious injury to the friendly relations which the Burgos authorities have declared they desire to maintain with the British Government." *London Times*, June 15, 1938.

See further statements of the Prime Minister, as reported in *ibid.*, June 22, 24, 28, July 2, 3, 27, 1938, in which all suggestions of providing anti-aircraft guns for merchant ships, bombarding the Balearic Isles, taking reprisals against Spanish Nationalist shipping, severing relations with Franco, and so forth, were rejected.

Under the pressure of circumstances, efforts were made to obtain an agreement for the cessation of the bombing and for the establishment of safety zones. After pressure had been exerted upon General Franco directly by the British, and indirectly through the good offices of the Italian Government, the British Government was assured, according to the Rome correspondent of the *New York Times*, that "First, British ships outside Spanish territorial waters will not be attacked. Secondly, British ships in Spanish ports will be spared as far as possible. Thirdly, three ports will be designated in republican Spain that will be accessible to 'honest traffic in goods under the international flag.'"<sup>45</sup> The insurgent authorities also agreed to a British proposal for a joint investigation commission, composed of one British and one insurgent naval officer, to investigate the facts of the cases regarded by the British Government as having involved deliberate attack upon British vessels.<sup>46</sup>

It has already been remarked that there is apparently no obligation under international law as it stands today which requires contesting parties in a civil strife to employ *inter se* the agreed rules of conduct for international warfare.<sup>47</sup> The rights and property of foreign states and their subjects may not be treated so capriciously, however. By virtue of its position as representative of the state, the established government may be required to observe the rules of international law toward foreigners. Once insurgency has been admitted, foreign states may hold the *de facto* insurgent authorities responsible for a similar line of conduct, and the action of the Government of the United States respecting the Soviet Union affords ample precedent for the withholding of *de jure* recognition from the new authorities until they are prepared to accept their obligations and liabilities under international law. The case of the bombing of foreign vessels in Spanish ports from insurgent aircraft was unusually complicated due to the fact that there are no universal or conventional rules of international law regarding aerial bombing even in time of international warfare. Restricting the problem to the ques-

<sup>45</sup> See statement of Prime Minister Chamberlain in House of Commons, June 14. *London Times*, June 15, 1938. See also *New York Times*, June 28, 29, 30, July 5, 7, 1938.

<sup>46</sup> Contained in address of Prime Minister Chamberlain to House of Commons on July 26. *New York Times*, July 27, 1938. The agreement also involved reference to a third country if the Anglo-Spanish commissioners were unable to agree in any cases referred to them. Compensation was to be made immediately after the award.

<sup>47</sup> Chapter I, note 18.

tion of bombing harbors and ports from aircraft, it cannot be said that the insurgents violated international law. But the intentional destruction of foreign movable property raises a broader and more fundamental proposition of law, within which liability exists. Every government and every state is responsible for the protection of foreign life and property. To fail to use due diligence for its protection exposes the government to liability. To attack it directly with a view to damage or destruction, even within the jurisdiction of a domestic enemy, unless it is in a line of fire and has failed to remove upon adequate warning, or unless it is giving aid and service to the military operations of the enemy, likewise exposes the attacking authority to liability. Considering the matter under this general principle of law, it would seem to make no difference what device or instrument of damage or destruction was employed. Given the intention, the means becomes of secondary consideration in the eye of the law. It is believed, therefore, that the proper conclusion to be drawn regarding the bombing of foreign shipping in Spanish ports is that the insurgents may rightly be held liable for damages which can be demonstrated to have been caused by direct attacks upon foreign vessels.<sup>48</sup>

#### SUBMARINE ATTACKS

Attention may now be turned to the fourth type of interference with foreign shipping, to wit: unwarned torpedoings by submarines.<sup>49</sup> Submarines played a considerable part in the revolution in Greece in 1935, but the Spanish civil war marks the first time that they have been employed against foreign commerce on the high seas during civil strife.

The total fleet of submarines possessed by Spain at the outbreak of hostilities in July, 1936, numbered twelve.<sup>50</sup> The majority of the submarines are understood to have remained in the control of the

<sup>48</sup> See Rousseau, "La Non-Intervention en Espagne," *op. cit.*, p. 502.

<sup>49</sup> G. A. Finch, "Piracy in the Mediterranean," *A.J.I.L.*, Vol. XXXI (1937), pp. 659-665. See Appendix XV-3 for particulars regarding submarine attacks during the Spanish strife.

<sup>50</sup> *Armaments Yearbook of the League of Nations*, 1936, p. 752. Three larger submarines were under construction at Cartagena at the outbreak of the war. It is understood that no one of these has been completed due to inability to obtain certain necessary parts as a result of the Non-Intervention Accord.

government, the insurgents securing possession of only three.<sup>51</sup> Notwithstanding the division of the fleet, no insurgent vessels were reported to have been torpedoed by submarines, while at least a dozen loyalist merchant and war vessels were declared to have been torpedoed in widely scattered areas of the Mediterranean including the Aegean Sea.<sup>52</sup> Far more serious were the submarine attacks upon German,<sup>53</sup> British,<sup>54</sup> and Russian<sup>55</sup> warships and merchant vessels which took place during 1937 on the high seas and in foreign territorial waters. Had the British and French Governments been willing to accede to the suggestion of the German Government (following the attack upon the cruiser *Leipzig* in June, 1937)<sup>56</sup> and demanded that all Spanish submarines be handed over to the four Powers for neutralization and internment, the submarine attacks upon British and Russian vessels in August and September, 1937, might never have occurred. Aroused by the submarine attacks, the Powers at first sought to deal with the situation by unilateral measures. The French Government instituted a system of patrol and convoy along the north African coast.<sup>57</sup> The British Government ordered all of its warships to counter-attack submarines attacking British merchant ships.<sup>58</sup> The Turkish Government organized a special

<sup>51</sup> See statement of Mr. Duff-Cooper, First Lord of the Admiralty, in the House of Commons, June 7, 1937, *Parliamentary Debates*, House of Commons, Vol. CCCXXVI, p. 320.

<sup>52</sup> *New York Times*, May 30, 31, June 4, July 29, Aug. 12, 15, 19, 31, 1937. See appeal of the Spanish Government to the League of Nations, Aug. 21, 1937. *League of Nations Document C.335.M.226.1937.VII*; *Minutes*, third meeting, 98th Session of the Council, Sept. 16, 1937, pp. 10-12, 99th Session, Oct. 5, 1937, pp. 5-6.

It may be pointed out for what it is worth that in the latter part of June, 1937, there were 4 German submarines stated by the British Admiralty to be in Spanish waters, and that these were the only foreign submarines there. Statement of Mr. Cooper, *Parliamentary Debates*, House of Commons, Vol. CCCXXV, pp. 1535-1536.

<sup>53</sup> *London Times*, June 19, 21, 22, 23, 1937.

<sup>54</sup> *Ibid.*, Sept. 2, 3, 8, Oct. 11, 1937; Feb. 1, 1938.

<sup>55</sup> *Ibid.*, Sept. 1, 3, 1937.

<sup>56</sup> *Ibid.*, June 22, 23, 1937.

<sup>57</sup> *Ibid.*, Aug. 17, 1937.

<sup>58</sup> *Ibid.*, Aug. 18, 1937. A significant editorial entitled "Piracy in the Mediterranean" appeared in the *London Times*, Aug. 25, reading in part:

"The British Government has made it abundantly clear that it does not regard the existence of civil war in Spain as conferring license upon any Spanish forces to interfere with British shipping on the high seas, and that it will not tolerate even such interference as the visiting of British ships in order to establish their character. Still less, of course, does it tolerate any more violent interference, and the British Navy has orders to afford protection to all British shipping against attack upon unarmed merchantmen provided they are its own. It has persistently advanced the principle that international law no

naval patrol for the Dardanelles with orders that any submarine encountered should be called upon to surrender and, if it did not comply, should be attacked with a view to destruction.<sup>59</sup> The Russian Government presented a note to Italy charging it with responsibility for the torpedoing of its vessels in the Aegean Sea, claiming an indemnity, and demanding that the officers in charge of the submarines be punished.<sup>60</sup>

#### THE NYON ARRANGEMENT OF SEPTEMBER 14, 1937

In the face of an international situation characterized as "fast becoming intolerable," France and Britain took the initiative in summoning a special conference at Nyon.<sup>61</sup> Invitations were sent to the Governments of Albania, Bulgaria, Egypt, Germany, Greece, Italy, Roumania, the Soviet Union, Turkey and Yugoslavia.<sup>62</sup> Regardless of the desire of Germany and Italy to have the question of the sub-

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less than the dictates of humanity and civilization forbids such attacks even in time of war . . .

"It is no justification of these crimes to plead that neither Spanish Government has acceded to the *Procès-Verbal* adopted by the rest of the world; or that since they are not accorded the belligerent right of visit and search of merchant ships at sea, knowing that their enemies' ships are using false colors, they have no alternative but to attack at sight. A new government seeking recognition does not recommend itself to the world by flouting the principles adopted by the world, even on the plea that its rival has not formally adopted them; and even the accordance of belligerent rights would not carry license to subject the ships even of the rival Government in its own country to the treatment inflicted of late upon all and sundry . . ."

<sup>59</sup> London *Times*, Aug. 27, 1937.

<sup>60</sup> Texts in *L'Europe Nouvelle*, Nov. 13, 1937, Supp. pp. i-ii. The Italian reply flatly rejected the imputation of responsibility and refused to meet all demands.

<sup>61</sup> The invitations read:

"1. The French and British Governments are of the opinion that immediate consultation between and action by the Mediterranean and certain other interested Powers has now become necessary to deal with the intolerable situation created by the attacks recently and illegally carried out against shipping in the Mediterranean by submarines and aeroplanes without disclosure of their identity.

"2. The two Governments accordingly propose that a meeting should be convened on September 10 to end the present state of insecurity in the Mediterranean and to ensure that the rules of international law regarding shipping at sea shall be strictly enforced.

"3. They suggest that Nyon would be a suitable place for the meeting, since the representatives of many of the Governments concerned will soon be at Geneva in the normal course of events.

"4. While the invitation is being addressed to 10 Governments, so that those to be represented from the first will number 12 in all, it will be open to any of them to propose the inclusion of other Powers."

<sup>62</sup> France originally desired membership in the Conference to be restricted to states bordering on the Mediterranean, but the British opposed this move.

marine menace taken up in the Non-Intervention Committee in London instead of at a separate conference, and their refusal to attend such a conference,<sup>63</sup> Britain and France determined to hold a conference without them for the purpose of condemning submarine activity in the Mediterranean, and providing sanctions for its punishment. Proceeding rapidly on the basis of a plan presented by the British delegation which was founded upon Part IV of the London Naval Treaty of 1930,<sup>64</sup> already adhered to by nine of the states invited to the Conference,<sup>65</sup> the Conference was able to conclude its labors within four days by the signature of the Nyon Arrangement.<sup>66</sup> This provided for the creation of an International Naval Patrol empowered to counter-attack, and, if possible, to destroy all submarines attacking, or believed to have attacked, non-Spanish merchant vessels in the Mediterranean (excluding the Adriatic and Tyrrhenian Seas) without warning and without first having placed the crew, passengers, and papers in safety according to the terms of Part IV of the 1930 Naval Treaty.

It is to be noted in passing that the protective measures ordained by this arrangement were limited to the present civil strife. No attempt was made to formulate rules of international law applicable generally to all cases of insurgency and civil war. It is of course conceivable that the rules and system may be readily re-adapted to other situations in the future. The arrangement was also limited to the extent that Spanish vessels were not included within the protective work of the International Naval Patrol. Against this the Spanish Government complained bitterly.<sup>67</sup> To have granted protection to Spanish vessels would have involved "intervention" in the war, which all Powers were pledged to avoid. No provision was made for the protection of non-Spanish war vessels. Such vessels were already

<sup>63</sup> The texts of the German and Italian replies may be found in the *London Times*, Sept. 10, 1937. Attention was called to the fact that the British and French Governments had shown little interest in collective measures of self-protection at the time of the attacks on the German war vessels.

<sup>64</sup> *British Treaty Series*, No. 29 (1936).

<sup>65</sup> Albania, Britain, Bulgaria, France, Germany, Greece, Italy, Soviet Union, Yugoslavia. *United States Treaty Information Bulletins*, Nos. 88-95.

<sup>66</sup> *League of Nations Document*, C.409.M.273.1937.VII; full text here in Appendix IX.

<sup>67</sup> *Minutes*, 3rd meeting, 98th Session of the Council of the League of Nations, Sept. 16, 1937, pp. 10-12.



in possession of instructions and means adequate for their own defense.

### "ACTS OF PIRACY"

The point of greatest interest in connection with the Nyon Arrangement is its designation of unwarned submarine attacks as "acts of piracy."<sup>68</sup> Piracy customarily has been considered to involve plunder, robbery, or destruction upon the high seas by private parties acting without state authorization, although precise definition has always been difficult, since piracy may involve many acts differing in nature and moral value.<sup>69</sup>

It has long been a moot point whether vessels of contesting parties in a civil strife whose belligerency has not been recognized should be regarded as piratical. The view has generally prevailed that a parent government cannot by municipal decree make insurgent vessels pirates *jure gentium*, so far as other states are concerned.<sup>70</sup> Publicists have inclined to the tenet that while the interference with foreign vessels on the high seas by vessels under the direction of parties whose belligerency has not been recognized bears semblance to piracy, the vessels should not normally be dealt with as pirates under the law of nations since their aim is to influence the outcome of a political contest.<sup>71</sup> Hall says, "It is enough that the power must always exist to treat them as pirates so soon as they actually overstep the limits of political action." Public officials and courts, on the other hand, have taken the more positive stand that any interference or depredation not only technically constitutes piracy but may be forcibly proceeded

<sup>68</sup> Finch, *loc. cit.* See also "The Charge of Piracy in the Spanish Civil War," by Raoul Genet, *A.J.I.L.*, Vol. XXXII (1938), pp. 253-263.

<sup>69</sup> Calvo, *Le Droit International*, Sec. 485; Fauchille, *op. cit.*, Sec. 483(50); Hall, *op. cit.*, Sec. 81; article 3, *Draft Convention on Piracy*, Harvard Law School Research in International Law; Möller, *op. cit.*, Vol. I, pp. 211-212; Moore, *Digest*, Vol. II, Sec. 311; Oppenheim, *op. cit.*, Sec. 275; Ortolan, *Diplomatie de la Mer*, Lib. II, Cap. 11; Phillimore, *op. cit.*, Lib. I, Sec. 353; *Report of the Subcommittee of the League of Nations Committee of Experts for the Progressive Codification of International Law*, pp. 116-117 (C.196.M.70.1927.V); Steil, *Der Tatbestand der Piraterie*, pp. 73-76; Westlake, *International Law* (Cambridge, 1910), Vol. I, p. 177; Wheaton, *Elements*, Pt. II, Chap. II, Sec. 15.

<sup>70</sup> Madrid decreed the rebel naval vessels to be outlawed and piratical, July 27, 1936, but the Powers refused to accept the decree *ipso facto*, so far as their international status was concerned.

<sup>71</sup> See, in addition to preceding reference: Weisse, *op. cit.*, p. 119 *et seq.*; Rougier, *op. cit.*, pp. 284-297; N.W.C., 1900, p. 8; *ibid.*, 1904, p. 37.

against as such by states whose commerce has been molested.<sup>72</sup> It should be added, however, that full punishment has not been frequently inflicted by foreign states.

The appellation of unwarned torpedoings of merchant vessels by submarines as "piratical acts" commenced during the late World War,<sup>73</sup> although, as Professor Garner has pointed out, the German and Austrian submarines technically were not pirate ships, as their commanders bore lawful commissions issued by fully recognized belligerent states.<sup>74</sup> Scrupulous care was obviously exercised in the notes and speeches of the President and Secretaries of State of the United

<sup>72</sup> *United States v. Smith* (1820), 5 Wheaton 153; *The Magellan Pirates* (1853), 1 Spinks Ecc. and Adm. R. 81; instructions of British, French and German Governments to their fleets in Spanish waters in the civil war of 1873, *British Foreign and State Papers*, Vol. LXV, pp. 770, 777, 786; the case of the Argentine rebel vessel *Portena* (1873), Calvo, *op. cit.*, Sec. 502; the case of the Peruvian *Huascar* (1877), *British Parliamentary Paper*, Peru, No. 1, 1877; the case of the *Cespedes* (1877), Calvo, *op. cit.*, Sec. 503; *United States v. The Ambrose Light* (1885), 25 Fed. Rep. 408; instructions to the American naval officers in Chilean waters in 1891, H. Ex. Doc. 91, 52d Cong., 1st Sess., pp. 245-246; instructions to British naval officers during same insurrection, *British Parliamentary Paper*, Chile, No. 1 (1892); *The Three Friends* (1897), 166 U. S. 1; the case of the Haitian rebel vessel *Crête à Pierrot* (1902), Pitt Cobbett, *Leading Cases on International Law* (London, 1922), Vol. I, p. 302.

Reference may be made to several similar cases found in the archives of the British Foreign Office but hitherto unpublished. Certain Spanish privateers seizing British vessels in West Indian waters in 1822, British naval vessels were ordered to take summary action to put a stop to the interference. Canning to Sir Wm. à Court at Madrid, Oct. 18, 1822. British Archives F. O. 72/254. Same trouble complained of in dispatch of July 17, 1824. F. O. 72/284. Spanish insurgent vessels having been decreed to be outlawed as pirates by the Spanish Government, the Law Officers of the Crown advised the Secretary for Foreign Affairs, July 24, 1873, that British vessels should treat them as such in any cases of interference. F. O. 83/2378. This advice was passed on by the Foreign Office to the Admiralty the same day in the following language: "His Majesty's Government consider that if Spanish ships of war which have revolted commit any acts of piracy affecting British subjects or interests they should be treated as pirates, decree of the Spanish Government having deprived them of the protection of the Spanish flag." F. O. 72/1391. During the insurrection in Cuba in 1884, a Spanish gunboat stopped and searched a British vessel, the *Scud*, on the high seas, believing her to be engaged in filibustering. Upon the basis of an opinion of the Law Officers, dated Sept. 22, 1884, the Foreign Office demanded apologies, disavowal and compensation, since Spanish warships were not possessed of belligerent rights. F. O. 72/1836, 1837. Professor H. A. Smith in a letter to the *London Times*, Feb. 16, 1938, states that he can find no case on record where vessels and officers commissioned by insurgents have ever actually been dealt with by a foreign state as pirates.

<sup>73</sup> A. P. Higgins, *Defensively Armed Merchant Ships and Submarine Warfare* (London, 1917), pp. 25-26; *Proceedings of the American Society of International Law*, 1916, p. 66; Mr. Sarraut at the Conference on Limitation of Armaments, 1921, *Conference on Limitation of Armaments* (Washington, 1922), p. 598.

<sup>74</sup> J. W. Garner, *International Law and the World War* (London, 1920), Vol. I, pp. 382-383.

States between 1914 and 1917, to avoid designating submarine activities resulting in the loss of American life and property as piratical acts, although they were spoken of as violating international law, the sacred principles of justice and humanity, the incontrovertible rights of neutrals, the immunities of non-combatants, as waging warfare against mankind, and finally as outlaws.<sup>75</sup>

The treaties of peace in 1919 contained no provision concerning or condemning submarine warfare. It may have been the intention of the authors of the treaties to deal with the matter through Article 228 of the Treaty of Versailles requiring Germany to recognize the right of the Allied and Associated Powers to bring to trial persons accused of having violated the laws of war. The Report of the Commission on the Responsibility of the Authors of the War and the Enforcement of Penalties declared the destruction of merchant ships without prior visit and placement of the crew and passengers in safety to be a violation of the laws of war, but it did not declare it to be piracy.<sup>76</sup> The three German officers eventually placed on trial before the Supreme Court of Germany under Article 228 for their part in the torpedoing of the British hospital ships *Dover Castle* and *Llandoverly Castle* were tried for violations of the laws of war and the commission of homicide, but no mention was made of their having committed an act of piracy.<sup>77</sup>

Submarine warfare and piracy were definitely linked together in the resolutions presented by Mr. Root at the Conference on Limitation of Armaments in Washington in 1922. As presented, Mr. Root's proposal sought to prohibit all use of submarines against merchant vessels and to attach the penalty of piracy to any such employment.<sup>78</sup> As finally embodied in the unratified Treaty Relating to the Use of Submarines and Noxious Gases in Warfare, the destruction of merchantmen without prior visit, search, and placement of the personnel in safety was declared to be a violation of the laws of war subjecting

<sup>75</sup> See the *Lusitania* note, Secretary of State Bryan to Ambassador Gerard at Berlin, May 13, 1915, *U. S. For. Rel.*, 1915 Supp., pp. 393-396; the *Sussex* note, Secretary of State Lansing to Mr. Gerard, April 18, 1916, *ibid.*, 1916 Supp., pp. 232-234; address of President Wilson to Congress, Feb. 3, 1917, *ibid.*, 1917 Supp., pp. 109-112; address of President Wilson to Congress, April 2, 1917, *ibid.*, pp. 195-203.

<sup>76</sup> Report printed in *A.J.I.L.*, Vol. XIV (1920), pp. 95, 113.

<sup>77</sup> *Ibid.*, Vol. XVI (1922), pp. 704-723.

<sup>78</sup> Conference, *op. cit.*, p. 556.

any person in the service of any Power who should violate such a rule, whether or not such person is under orders of a governmental superior, to trial and punishment as if for an act of piracy.<sup>79</sup> This conclusion was reached in spite of the consensus that it was not competent for the five Powers present at the Conference to establish new rules of international law, including the branding of such action as piracy *jure gentium*.<sup>80</sup> The decision was also taken in spite of the fact that only one delegate, Mr. Hanihara of Japan, raised a question as to the exact meaning of "punishment as if for an act of piracy," which was brusquely pushed aside by Mr. Hughes and Mr. Root, who made no adequate answer and immediately cut off further debate.<sup>81</sup> While the treaty was not ratified, it may be pertinent to point to the carefully studied observation in the comment on the Draft Convention on Piracy of the Harvard Law School Research in International Law that "properly speaking . . . piracy is not a legal crime or offense under the law of nations."<sup>82</sup>

Part IV of the London Naval Treaty of 1930 invited states to accede to the proposition that according to international law submarines must conform to the rules of surface craft, and that, except in case of resistance to visit and search, merchant vessels must not be destroyed without first placing the crew, passengers, and ship's papers in safety.<sup>83</sup> Non-conformity by submarines was not branded an act of piracy, nor was any state authorized to bring to trial or to inflict the punishment for piracy upon the officers or crew of any submarine violating the rules. While nine of the states invited to the Nyon Conference had agreed to abide by the rules of this treaty, the Spanish Government had not done so.

The conclusion which must be drawn from this brief résumé of practice and conventional agreement is that in September 1937 the unwarned torpedoing of merchant vessels was not an act of piracy

<sup>79</sup> *Ibid.*, p. 1605 *et seq.*

<sup>80</sup> *Ibid.*, pp. 700, 702, 704, 708, 718-726.

<sup>81</sup> Mr. Root's answer was that "such a person would not be subject to the limitations of territorial jurisdiction. The peculiarity about piracy was that, though the act was done on the high seas and not under the jurisdiction of any particular country, nevertheless it could be punished in any country. That was the really important point." Conference, *op. cit.*, p. 728.

<sup>82</sup> *A.J.I.L.*, Vol. XXVI (1932), Supp., p. 759.

<sup>83</sup> *British Treaty Series*, No. 29 (1936).

according to accepted international law.<sup>84</sup> Might the nine Powers meeting in conference at Nyon make the interference with foreign vessels by surface, air, and submarine craft, piracy *jure gentium* by the adoption of an arrangement to which the majority of the states of the world, and Spain in particular, were not parties?

On the basis of state practice in the past, considering that belligerency had been consistently withheld, considering that Spanish naval instructions forbade the employment of armed force in such a manner as it was utilized in 1936-1937, and in view of the fact that the submarines and aircraft refused to reveal their identity, attacking in a summary and stealthy fashion, there would seem to be little doubt that the foreign Powers had a right to regard and to treat such attacks as being assimilated to acts of piracy which might be resisted by any means. Self-preservation alone justified the resort to the use of such force as might be necessary to repel and to resist such attacks.

On the other hand it may be argued conversely that no small group of Powers had the right to make the vessels of a state not represented at the conference pirates *jure gentium*, and to subject them to extreme summary punishment without investigation and trial. Acting as they did, these Powers set themselves up as legislators, plaintiff, judge, jury, and executioner at one and the same time. Such a determination of a crime of piracy amounted to a dictation to Spain and an intervention in its internal affairs, since piracy was admitted by international law only to be a crime and punishable under municipal law. The Nyon Arrangement prescribed a punishment exceeding in severity that laid down by the laws of Spain or of any foreign state.<sup>85</sup> Whereas pirates had been regarded heretofore as *hostes sui generis* but not beyond the pale of the law, the Nyon Arrangement made them *hostes ex lege*, to be denied the benefits of arraignment and trial.

<sup>84</sup> The author is happy to discover that the same conclusion has been reached by Professor Genet of France, in his article on "The Charge of Piracy in the Spanish Civil War," *A.J.I.L.*, Vol. XXXII (1938), p. 253.

If, as charged in the Russian notes to Italy, and in the public press, Italian submarines were responsible for some of the attacks upon foreign vessels in 1937, it would be proper to hold that there had been a violation of the 1930 Treaty. These charges cannot be proven, and the Italian Government expressly denied them. *London Times*, Sept. 7, 8, 1937.

<sup>85</sup> For Spanish laws, see *A.J.I.L.*, Vol. XXVI (1932), Supp., pp. 1006-1009.

It is believed that the weight of propriety lies upon the side of the first set of arguments. The submarines and other craft unquestionably infringed the international rights of foreign states in an arbitrary manner, which repeated diplomatic notes and threats failed to stop. In failing to reveal their identity, the unknown craft conveyed the impression that, like pirates, they had no authority for being upon the high seas. In dealing with foreign vessels as they did, they not only violated their own naval instructions, but also rules of procedure accepted as law by a considerable number of states. The Nyon Arrangement did not specifically state that the objectionable craft were pirates or guilty of the crime of piracy. It merely stated that their actions "should be justly treated as acts of piracy." As there may be a difference between an act of war and war itself, so there may be a difference between an act of piracy and the crime of piracy. Whether this be a tenable distinction or not, the fact remains that the Nyon Arrangement did not assert as a *fiat* that the craft or their personnel were pirates. It did not establish a punishment for piracy. Rather it authorized the taking of certain measures "with a view to the *protection* of all merchant ships," which was essentially of a deterrent and negative nature and not of a punitive character for the punishment of a wrong already completed. Considering that the unlawful bombings and torpedoings produced their effects upon foreign vessels, the states having jurisdiction over such vessels were entitled to adopt and to apply such rules and penalties as their own laws determined.<sup>86</sup> Legal reasons aside, it is easy to understand why the conferees at Nyon did not choose to provide for possible capture and trial for the crime of piracy. As privateering was declared to be illegal, and was abolished by the states participating in the Declaration of Paris (while it was still being resorted to and upheld by other states),<sup>87</sup> a declaration which has long since been hailed for its furtherance of international law, so may the Nyon Arrangement and Supplementary

<sup>86</sup> The Permanent Court of International Justice in the case of the *Lotus* said that "if a guilty act committed on the high seas produces its effects on a vessel flying another flag or in foreign territory, the same principles must be applied as if the territories of two different states were concerned, and the conclusion must therefore be drawn that there is no rule of international law prohibiting the states to which the ship on which the effects of the offense have taken place belongs, from regarding the offense as having been committed in its territory and prosecuting, accordingly, the delinquent." *Publications of the Court*, Ser. A, No. 10, p. 25.

<sup>87</sup> H. A. Smith, *Great Britain and the Law of Nations* (London, 1932), Vol. I., pp. 10-12.

Agreement be extolled in the future for their advancement of rules of international law dealing with submarines and aircraft in time of insurgency.

It may be worth noting that the Nyon Arrangement authorized the naval vessels assigned to the anti-piracy patrol to navigate and to perform their protective functions within the territorial waters of all of the signatory states, without requesting permission to enter in each instance, without first inviting the littoral state to counter-attack any offending craft, and without asking the permission of the littoral state to fire upon or to destroy the said craft within its jurisdiction.<sup>88</sup> Such permission was given, of course, only for the duration of the present exigency. From the point of view of European diplomacy it may be recalled that the British Government united these same Powers bordering on the Mediterranean in a Mutual Assistance Agreement in 1935 at the time of the crisis over the question of sanctions, in which mutual resort to and use of each other's territorial waters was provided for.<sup>89</sup> Taken altogether, the Mutual Assistance Agreement of 1935, the Observation and Control Scheme of March, 1937, and the Nyon Arrangement established important precedents of collective naval action in the Mediterranean.

The adoption of the Nyon Arrangement resulted in an immediate cessation of concerted submarine and aerial attacks upon foreign vessels, although after some lapse of time sporadic attacks recurred.<sup>90</sup>

Subsequent to an apparent renewal of submarine attacks in 1938, the British, French, and Italian Governments agreed to supplement the instructions to their naval vessels operating under the Nyon Arrangement to the effect that any submarine detected submerged in the high seas in the areas subject to their patrol operations would be regarded as "contemplating an attack on merchant shipping," and would be attacked accordingly.<sup>91</sup>

<sup>88</sup> See *Draft Convention on Piracy*, Harvard Law School Research in International Law, Arts. 7 and 8, together with comments and references.

<sup>89</sup> *Official Journal*, Spl. Supp. No. 150 (Geneva, 1936), pp. 332-335; *British Parliamentary Paper*, Ethiopia, No. 2 (1936), Cmd. 5072. This agreement was terminated in July, 1936, just prior to the outbreak of the Spanish civil disturbance. *London Times*, July 12, 1936.

<sup>90</sup> See Appendix XV-3 (1938).

<sup>91</sup> *Parliamentary Debates*, House of Commons, Vol. CCCXXXI, pp. 658-659; *London Times*, Feb. 4, 1938.

## CONCLUSIONS

Few civil disturbances can rival the present Spanish strife in the number of legal problems to which it has given rise by interference with foreign shipping. The introduction of automatic contact mines, aircraft, and submarines, revealed the lack of adequate provisions of law covering the employment of such devices in time of insurgency and civil war. While objection has been made to the refusal of the Powers to accord recognition of belligerency to the parties in Spain, and to the Non-Intervention Accords,<sup>92</sup> it would appear, nevertheless, that significant progress was made in the enunciation and clarification of rules of international law dealing with the status of, and interference with, foreign shipping during civil strife. From public statements and practice, it would appear that the following were held to be rules of international law during the Spanish Civil War:

(1) Contestants whose belligerency has not been recognized may interfere with and control the movements of foreign vessels venturing within territorial waters.

(2) Municipal decrees closing ports in the hands of the enemy to foreign vessels are binding only when supported by an adequate force in front of the designated port or ports, and foreign vessels attempting to enter may not be penalized as if for the violation of a blockade.

(3) Municipal orders purporting to establish a blockade outside the three-mile limit are to be respected only if belligerency has been recognized; otherwise, freedom of navigation may be enforced up to the three-mile limit.

(4) No right exists to interfere, in any way, by any device or weapon, with foreign shipping beyond the three-mile limit, in the absence of recognition of belligerency by the foreign states having jurisdiction over the vessels concerned.

(5) Automatic contact mines may be placed within territorial waters in time of civil disturbance, provided adequate notice of the same is given to foreign shipping and provided safe-conducts are supplied to foreign vessels entitled to pass through the mined areas on lawful errands.

<sup>92</sup> H. A. Smith, "Some Problems of the Spanish Civil War," *British Year Book of International Law*, 1937, pp. 17-31; J. W. Garner, "Recognition of Belligerency," *A.J.I.L.*, Vol. XXXII (1938), pp. 106-113, and citations therein.



(6) No right exists in time of civil disturbance to sow automatic contact mines in or upon the high seas, and parties placing mines may be held strictly accountable for any damages resulting to foreign vessels upon the high seas by mines planted therein or drifting there-upon.

(7) Submarines are subject to the same rules as are surface vessels in their treatment of merchant vessels, and to the limitations set forth in Points 2, 3, and 4 above; they may never torpedo foreign vessels without warning and without first calling upon the vessel to stop or to deviate under escort to a designated point for visit, search, and ascertainment as to liability to capture, and without having allowed the crew and passengers to take to lifeboats under conditions of weather and proximity to shore or rescue which may be regarded as safe.

(8) The bombardment of foreign vessels from aircraft is lawful only when the same rules, conditions, and limitations applying to submarine torpedoing have been complied with and fulfilled.

(9) The failure of a foreign merchant vessel within territorial waters to stop or to deviate under escort for visit and search when called upon to do so in accordance with the proper summons may result in its being fired upon by gun-fire, torpedo, or aerial bomb, without further liability being attached to the craft resorting to such means of compulsion.

(10) War vessels or craft of contestants in a civil disturbance whose belligerency has not been recognized may be proceeded against as pirates by foreign states whose vessels have been attacked or interfered with upon the high seas.

(11) The failure of submarines or aircraft subject to the jurisdiction of civil contestants whose belligerency has not been recognized or whose identity is not ascertainable to abide by the rules set forth above may result in counter-attack and possible destruction without capture and trial, as if for the commission of an act of piracy.

(12) Foreign states may take such forcible and summary measures as may appear to them to be necessary to deter or to terminate unlawful interference with their vessels upon the high seas, or legitimately within foreign territorial waters, when remedies sought through normal diplomatic channels have been unattainable.

It may be agreed that the more normal path to have pursued during

the Spanish disturbance would have been to recognize the belligerency of the contestants. Such a course would not necessarily have been incompatible with the Non-Intervention Accords, or with the Observation and Control Scheme.<sup>93</sup> Recognition might not, however, have reduced the interference with foreign vessels upon the high seas. On the contrary, it might have resulted in a material increase in the amount of such interference through giving the contestants the legal right to roam the high seas at will. Recognition might not have resulted in averting or eliminating unwarned bombings or torpedoings. It might well have stimulated further such summary procedure.

Given the circumstances surrounding the Spanish insurrection from July, 1936, and admitting the shortcomings and limitations of the Non-Intervention Accord, the Observation and Control Scheme, and the Nyon Arrangements, it seems fair to admit that these three agreements, whether or not adopted in other civil disturbances, stand as important experiments in and contributions to international coöperation and administration, and as significant attempts to bring some of the international aspects of civil war within the realm of international regulation and law.

<sup>93</sup> N. J. Padelford, "The International Non-Intervention Agreement and the Spanish Civil War," *A.J.I.L.*, Vol. XXXI (1937), pp. 578-604. See statement by Secretary Eden in the House of Commons, Nov. 1, 1937. *London Times*, Nov. 2, 1937.

### CHAPTER III

#### THE INTERNATIONAL NON-INTERVENTION SYSTEM

One of the most striking features of the present Spanish civil strife has been the evolution, and devolution, of the international accord for non-intervention in Spain, and the observation and patrol system set up in connection therewith.<sup>1</sup> The purpose motivating the accord was the desire to prevent Europe from becoming so bound up with and so divided over the ideological aspects of the conflict that the fighting would lead to a general European war. If the devices have not succeeded altogether in stopping the entrance of supplies and men into Spain; if they have glossed over or provided a screen behind which violations of pledged undertakings have occurred; if they have become popular laughing-stock, and have allowed unfortunate Spain to become a military laboratory for the testing of weapons and strategy, they have, nevertheless, been instrumental, along with other things perhaps, in averting an extension of hostilities to other territories.

From the outbreak of the insurrection, men and materials of war of foreign nationality and origin poured into Spain for the benefit of both sides. No accurate estimate of the amount of supplies or of the numbers of foreign soldiers and service hands has been made. Fantastic charges and reports were constantly circulated, and the Italian Foreign Office even went so far as to announce at one time that there were forty thousand Italian troops in Spain.<sup>2</sup> No attempt will be

<sup>1</sup> Part of this chapter appeared originally in the *American Journal of International Law*, October, 1937, pp. 578-603.

<sup>2</sup> *London Times*, Oct. 19, 1937. See very full dispatch to same paper from a special correspondent in Spain, March 9, 1937. Informative dispatches will be found in the *New York Times* under the dates of May 27, June 22, July 12, 21, 1938; Feb. 17, 1939. It seems reasonably clear that Italian armed intervention first occurred several days after airplanes and implements of war began reaching the Spanish Government from Powers favorable to its cause. There has recently appeared a volume entitled *Foreign Intervention in Spain* by "Hispanicus" (London, 1938). The temper of the editor's comments and the partial and fragmentary nature of the so-called "documents" composing the volume are such as to render it of little scientific value. A large number of the "documents" are brief excerpts from newspaper articles written by correspondents in Loyalist territory, whose dispatches have been subject to censorship, or by writers notorious for their political leanings. There is little material regarding intervention on the Loyalist side, and such as there is, is of a general rather than of a specific nature.

made in this book to assay the charges and reports. That task must be left to the historian and researcher of the future. Here attention will be confined to the ways and means by which the European states, or at least some of them, endeavored to keep the foreign intervention by materials and man-power within bounds and control.

The effort to accomplish these ends involved eight steps: (1) the reaching of an international accord pledging the Powers to prohibit the exportation of arms, ammunition, and implements of war to both sides in Spain; (2) the adoption of the necessary legislative or executive measures by the participating states; (3) the search for methods of enforcement; (4) the reaching of an international accord pledging the Powers to interdict the departure of volunteers or troops for service in Spain; (5) the adoption of the necessary legislative or executive measures by the participating states; (6) the establishment of the Observation and Control Scheme; (7) the adoption of the necessary legislative or executive measures for compelling merchant vessels to comply with the Observation and Control Scheme; (8) the consideration of a Plan for the withdrawal of foreign volunteers and troops from Spain and for the granting of belligerent rights to the Spaniards.

#### THE 1873 PRECEDENT

It has been commonly supposed that the present non-intervention accord has been quite without precedent. Indeed, the Non-Intervention Committee seems to have been unaware of any previous similar agreement. As a matter of fact, in the Spanish civil war of 1873-1875 an international non-interference accord, albeit of a much less formal and organized nature, was worked out. In an interview between the French Foreign Minister and the British Ambassador on August 3, 1873, the French Minister expressed apprehension lest Germany intervene in Spain and so not only precipitate a crisis in France but in Europe as well. It was stated that French policy was that of strict neutrality and non-interference, and the British Government was asked to use its influence to prevent Germany from intervening.<sup>3</sup> Inquiries in Berlin revealed readiness to agree to a principle of non-interference and coöperation. In a note from the German Ambassador in London to the British Foreign Minister, August 9, 1873, Count

<sup>3</sup> British archives: F. O. Spain, 1391.

Münster said: "I have been instructed by my Government, in so far as the British Government may be agreed with that of Germany, to come to a *formal agreement* on this subject."<sup>4</sup> Granville, in a memorandum made of his interview with the German Ambassador, relates that it was found that the two governments were adopting substantially the same instructions for their diplomatic, consular, and naval authorities in Spain, and that France was prepared and anxious to concert with them.<sup>5</sup> The other major European Powers and the United States were informed of the accord and invited to draw up the instructions for their officers in similar vein.<sup>6</sup> Favorable response greeted this *démarche*, so that it may be said that there existed an international agreement upon the principle of non-intervention.<sup>7</sup> The accord was never reduced to a formal document. Granville, writing to Ambassador Adams in Berlin, August 30, 1873, said:

. . . while we were desirous to act in common with the German Government, and while those acting under our orders in Spain showed themselves to be desirous of doing so in the most cordial manner, yet I had understood that Prince Bismarck had been of the opinion, in which I entirely agreed, that it was better not to have any formal agreement, although we should follow the same course in principle and details. I added that I believed our instructions, if similar ones were given to the German naval officers, would accomplish this . . .

Count Münster expressed a wish that an intimation should be made to our chargé d'affaires at Madrid, and through him to our naval officers, that although no formal agreement exists, the two Governments were acting "*d'un commun accord*." I answered that our chargé d'affaires had been fully

<sup>4</sup> *Ibid.*

<sup>5</sup> British archives: F. O. Spain, 1392.

<sup>6</sup> *Ibid.*, also Vol. 1393. No evidence can be found in the archives of the Department of State in Washington of the receipt of information regarding such an accord or of copies of the instructions to naval officers. No instructions can be found to representatives of the United States in Spain directing them to pursue a course similar to that of the representatives of Britain, France and Germany.

<sup>7</sup> The British instructions may be found in the circular note of Granville to the Powers, Aug. 20, 1873, printed in *Br. & For. St. Pap.*, Vol. LXV, pp. 769-772. These embraced: (1) interference only for protection of British life and property; (2) use of force to this end if necessary; (3) avoidance of seizures of Spanish vessels unless necessary for (1); (4) abstention from proceedings from which sympathy for either party might be apparent; (5) confining communications with local authorities to such as might be necessary for protecting life and property; (6) refraining from landing armed forces except to safeguard the embarkation of subjects or persons entitled to asylum; (7) seeing that any persons granted asylum on British ships should not interfere therefrom with Spanish affairs; (8) that refugees be landed as soon as practicable and safe for them, without turning them over to the authorities.

informed of what had passed between the two Governments, and that as soon as we knew that instructions similar in effect to those we had sent had been forwarded to German naval officers, I would immediately cause our officers to be informed of the agreement which existed.<sup>8</sup>

Nothing further was agreed upon between the Powers in 1873, although much correspondence was exchanged. From this correspondence it is gathered that there was relatively little foreign interference during the remainder of the contest; certainly it was not to be compared with the interference in the struggles of the 1820's, the 1830's, and during the past two years.

### NON-INTERVENTION IN CIVIL STRIFE

Of more recent date have been the non-intervention agreements adopted by the American republics in 1928, 1933 and 1936,<sup>9</sup> whereby the parties undertook to prevent aid in the form of men or materials reaching rebellious groups in time of civil strife, and declared to be "inadmissible the intervention of any one of them, directly or indirectly, and for whatever reason, in the internal or external affairs of any other of the Parties." These agreements are, of course, binding only within the American continents and have had no bearing upon relationships with Spain during the civil strife there. They may be viewed as indicative, however, of sentiment on the question of non-

<sup>8</sup> British archives: F. O. Spain, 1392. An extract of this is printed in *Br. & For. St. Pap.*, Vol. LXV, pp. 776-777.

<sup>9</sup> By Article 1 of the Convention on the Duties and Rights of States in the Event of Civil Strife, concluded at Havana in 1928, the parties agreed: (1) to "use all the means at their disposal" to prevent persons in their territories from "participating in, gathering elements, crossing the boundary or sailing from their territory for the purpose of starting or promoting civil strife"; (2) to disarm and intern rebel forces crossing into their jurisdictions; (3) to forbid the traffic in arms and war material, "except when intended for the Government, while the belligerency of the rebels has not been recognized, in which latter case the rules of neutrality shall be applied"; (4) to prevent the arming, equipping or adapting of vessels "intended to operate in favor of the rebellion." *U. S. Treaty Series*, No. 814.

In Article 8 of the Convention on the Rights and Duties of States, signed at Montevideo in 1933, it was agreed that "No state has the right to intervene in the internal or external affairs of another." *Ibid.*, No. 881.

The Additional Protocol Relating to Non-Intervention, signed at Buenos Aires in 1936, specified: "The High Contracting Parties declare inadmissible the intervention of any one of them, directly or indirectly, and for whatever reason, in the internal or external affairs of any other of the Parties. The violation of the provisions of this Article shall give rise to mutual consultation, with the object of exchanging views and seeking methods of peaceful adjustment." *Ibid.*, No. 923.

intervention in the Americas, and they stand as interesting precedents for the European accord with regard to Spain.

#### ANALYSIS OF THE DECLARATIONS OF 1936

The non-intervention plan for the Spanish strife was a more formidable affair. Authorship is regarded as belonging to Premier Blum of France, and specifically based upon an exchange of notes between the British and French Governments of August 15, 1936.<sup>10</sup> These notes, which were substantially identical, contained reference to the establishment of a common attitude toward the Spanish strife, a preamble, and three declarations of policy. The preamble recited that the governments, deploring the events in Spain, had decided to abstain rigorously from all interference (*de toute ingérence*), direct or indirect, in the internal affairs of Spain, on the basis of the desire to avoid complications prejudicial to the good relations between their "Peoples." They then "declared": (1) they would prohibit the direct or indirect exportation or reexportation of all "arms, munitions and materials of war as well as all airplanes, mounted or dismantled, and all ships of war" from their territory to Spanish territories; (2) the prohibitions would apply to contracts in the process of execution; (3) the governments would keep other governments participating in the mutual understanding (*cette entente*) informed of the measures taken to carry out the prohibitions. The application of the declaration was made contingent upon the adherence of the other government, plus the Governments of Germany, Italy, the Soviet Union, and Portugal.

Twenty-seven governments eventually made similar declarations, in one form or another. Switzerland refused to adhere to the accord but actually forbade the exportation of arms and war supplies. However, the composition and contents of the notes varied so much that it can hardly be said that all of the states declared their intention of doing identically the same things.

Analysis of the notes reveals that fifteen (aside from those of Britain and France) of the 27 repeated verbatim both the preambulatory reasons for making the declaration and the three basic declarations of policy.<sup>11</sup> Between these states and France and Great

<sup>10</sup> The texts of all Declarations and Notes will be found in Appendix I.

<sup>11</sup> Albania, Belgium, Denmark, Estonia, Finland, Greece, Irish Free State, Lithuania, The Netherlands, Norway, Roumania, Czechoslovakia, Sweden, Soviet Union, Yugoslavia.

Britain, then, there was a community of policy on the steps to be taken and on the reasons for taking them.

The notes of six states repeated verbatim the three seriatim declarations but omitted the preamble.<sup>12</sup> By omitting the preamble these states left themselves free to engage in all forms of interference or intervention not specifically set forth in the first two declarations, while the seventeen others noted above agreed to refrain from *all* interference, direct or indirect. Legally speaking, these six states restricted themselves less than did the others, and they are hardly to be condemned for allowing volunteers, officers, financial, and moral aid passing to Spain, public opinion and newspapers notwithstanding.

The Austrian and Bulgarian replies accorded in substance with the first group, except that they did not extend the prohibition to contracts being fulfilled.

Interpretations, qualifications, or reservations were appended to the documents of five states. Germany made her adherence conditional upon that of all European states having sizable industries for producing the prohibited goods. The Hungarian note called attention to the lack of definition of the terms "*de toute ingérence, directe ou indirecte,*" and said it supported the accord on the supposition that all would be agreed "*sur la notion de non-intervention indirecte.*" This ingenious distinction is important. It was never satisfactorily cleared up, and the absence of clarification would appear to give the Hungarians a loophole of escape. The Italian interpretation followed the same line. It said that it interpreted "*ingérence indirecte*" in the sense that in the agreeing countries "public subscriptions or enrollment of volunteers in favor of one or the other of the parties in conflict is forbidden. The Italian Government in accepting adherence to 'direct' non-intervention, has the honor in consequence to maintain its observations concerning 'indirect' non-intervention." But, be it noted, the Italian reply did not embody the preamble clause in which the determination to abstain from all direct or indirect interference is stated. The Italian interpretation amounts in fact to an attempt to dictate what the Powers including the preamble in their notes must and must not do, while Italy goes on her own way and does not in actuality bind herself to prohibit public subscriptions or the enrollment of volunteers, which assumes additional interest in the light of subsequent events.

<sup>12</sup> Germany, Hungary, Italy, Latvia, Poland, Turkey.



The Turkish and Yugoslav notes contained two interesting reservations, to wit: that the present accord was of an exceptional nature, and that it was "not to constitute a precedent, or result in even the implicit recognition of a principle that a government cannot render to a legal government, on the demand of the latter, aid in the struggle against rebellion."

The Luxemburg declaration repeated neither the preamble nor the three declarations. It adhered to the French "proposition," but in actuality only forbade the exportation of "arms."

The only document published by the Swiss Government was a *communiqué* to the press. This said that on account of "reasons drawn from the permanent neutrality of the Confederation," the government did not intend to participate in the common declaration, but was taking "autonomous action to conform with the policy of non-interference." Considering that the common declaration had only moral force and that its execution depended solely upon the enactment and enforcement of national laws and decrees, there is no reason to say that the Swiss procedure, though out of step with the others, was less legal or effective.

Portugal has always shared with France great concern over Spanish wars. Her reaction, therefore, to the non-intervention scheme was of major importance. The Portuguese note set forth the terms under which it thought it possible to "realize the *thought* of non-intervention." While the substance of the preamble was included, it was expressly reserved that, as forced by circumstances, the taking of the following measures would not be considered as direct or indirect interference: (1) steps for the defense of the internal public order, security, goods, and lives of Portuguese citizens, or for the safeguarding of territorial integrity and security; (2) the application of conventions or international decisions required by the circumstances of war; (3) mediation between the contending parties, if conditions permitted; (4) defense against any subversive social régimes which might be established in Spain if the necessity to safeguard Western civilization occasioned such defense; (5) the maintenance of relations with the central and local authorities in Spain; (6) recognition of the belligerency of the contending parties, or recognition of a new government, or modification of the conditions of diplomatic or consular representation.

Enforcement of the three declarations was made expressly depend-

ent upon the rigorous observance by all others of the international accord. Going one step beyond the Italians, the Portuguese note stated that if *any* countries consented to the enrollment of volunteers or the raising of funds for the war, Portugal would be automatically released from all obligations under the accord, thus placing herself in an especially privileged position of obtaining release on the basis of action from which others had not agreed to refrain.

With regard to the six exceptional measures mentioned, condition No. (4) is the only one which is perhaps fundamentally incompatible with the undertakings of the other states. The other reservations may have been implicitly retained by all of the states, although of course the taking of any one of the steps might conceivably involve interference in one way or another.

Conjointly with the Portuguese adherence, the British Government reaffirmed its ancient defensive alliance with Portugal, and agreed *de nouveau* to come to her defense if she should be attacked by Spain or any other Power as a result of participation in the Non-Intervention Accord.

It must be emphasized that the accord was not a formal international agreement or treaty in the sense that the participating states subscribed by signature and ratification to one written instrument. It was an "accord" only in a very loose form, a series of *unilateral declarations of intention* of the national policy which would be pursued. Departures from the accord cannot be condemned as violations of international law or of treaties. They constituted only deviations from a line of policy which each state suggested its readiness to follow for the time being. The fulfillment of the accord, or its enforcement in any particular state depended entirely upon the good-will and coöperation of the authorities of that state, and upon the enactment and/or enforcement of such legislative, executive or administrative measures as were deemed to be desirable.

#### NATIONAL MEASURES FOR THE ENFORCEMENT OF THE DECLARATIONS

Much importance attaches to the legislative and other measures adopted and applied by the several governments for the effective execution of the policies set forth in the Declarations just noted. These documents, representing what is believed to be a substantially complete collection, will be found in Appendix III. The measures are

worthy of study, not only in connection with the Spanish strife, but also for the light which they throw upon the considered law and policy of the several states, in relation to the exportation of arms in general, the obligation to permit or to withhold shipments destined to states engaged in or undergoing strife, or to parties located therein. More particularly, they merit examination with specific reference to the extent to which they appear calculated to provide execution of the policy of non-intervention in Spain.

Was a restriction or some sort upon the exportation and transit of arms, ammunition or materials of war in force, or available by existing law for enforcement on August 1, 1936? In the case of twenty-one participating states such a restriction appears to have been in force or readily enforceable on the basis of existing law.<sup>13</sup> In seven countries, including Switzerland, no such restriction appears to have been in force or readily available without the adoption of new legal measures.<sup>14</sup> Among those having restrictions upon the exportation

<sup>13</sup> <i>Name of State</i>	<i>Date of Law Currently in Force or Enforceable</i>
Austria	Jan. 17, 1928.
Belgium	June 30, 1931; July 30, 1934.
United Kingdom	June 1, 1931.
Bulgaria	Jan. 26, 1925.
Czechoslovakia	Dec. 13, 1927; Oct. 19, 1935; May 13, 1936.
Denmark	April 28, 1934.
Estonia	June 4, 1926.
France	Sept. 3, 1935; Oct. 20, 1935; June 2, 1936.
Germany	Nov. 6, 1935.
Greece	June 27, 1932.
Hungary	Act XIX, ex-1924.
Irish Free State	Firearms Law, 1925.
Italy	June 18, 1931; Jan. 21, 1929.
Latvia	Trade in Arms Law, 1932.
Lithuania	July 10, 1924; April 3, 1925.
Luxemburg	Oct. 29, 1935.
The Netherlands	June 7, 1919; July 11, 1919; July 8, 1932.
Norway	June 28, 1927.
Poland	Oct. 27, 1932.
Sweden	Dec. 19, 1930; March 3, 1933; Sept. 29, 1933; Oct. 18, 1935.
Yugoslavia	Sept. 21, 1929; March 20, 1930; Aug. 9, 1934.

<sup>14</sup> <i>Name of State</i>
Albania
Finland
Portugal
Roumania
Turkey
U.S.S.R.
Switzerland

Note—Switzerland is placed last in each list owing to the special character of its relationship to the Non-Intervention system.

of war materials, the laws of all save one state provided that the restrictions should be in force *at all times*. The Belgian law provides that restrictions are to be instituted, "If under extraordinary or abnormal circumstances, the vital interests of the country are in peril. . . ." No mention is to be found in any of the laws existing on August 1, 1936, of civil war or civil strife as such. The restrictions, existing or authorized, speak only of exportation from and transit through the given country, or of exportation to foreign countries.

With the exception of Czechoslovakia and Sweden, new or additional measures prohibiting the exportation, reëxportation or transit of the objectionable commodities were adopted by all of the coöperating states after August 1, 1936.<sup>15</sup> For the most part these new measures were specifically drawn up with a view to the Spanish situation, and were restricted thereto.<sup>16</sup> Austria, Belgium, Denmark and Lithuania couched their measures in general terms, without reference in any way or manner to Spain or to the situation prevailing there or to the Non-Intervention system. Other countries adopted measures some

<sup>15</sup> Albania, Sept. 12, 1936.

Austria, Sept. 25, 1936.

Belgium, Aug. 4, 19, 28; Nov. 9, 1936; Feb. 17, 1937.

United Kingdom, Dec. 3, 1936; June 8, 1937.

Bulgaria, Aug. 31, 1936.

Denmark, May 7, July 16, 1937.

Estonia, Sept. 8, 1936.

Finland, Sept. 4, 1936; April 9, 1937.

France, Aug. 8, Sept. 18, 1936; May 21, June 22, Dec. 30, 1937.

Germany, Aug. 24, 1936; Aug. 16, 1937.

Greece, Sept. 24, 1936.

Hungary, Sept. 4, 1936.

Irish Free State, Feb. 26, 1937.

Italy, Aug. 28, 1936.

Latvia, Sept. 10, 1936.

Lithuania, Aug. 14, 29, 1936.

Luxemburg, Sept. 3, 1936.

The Netherlands, March 4, 30, 1937.

Norway, Sept. 11, Oct. 3, Nov. 27, 1936.

Poland, Dec. 16, 1936.

Portugal, Aug. 27, 1936.

Roumania, Sept. 2, 1936.

Turkey, Sept. 1, 1936.

U.S.S.R., Aug. 28, 1936.

Yugoslavia, Aug. 23, 1936.

Switzerland, Aug. 14, 1936; Feb. 20, July 8, 1938.

<sup>16</sup> Countries whose measures dealt specifically and exclusively with the Spanish situation were: Albania, Bulgaria, Estonia, Finland, Greece, Hungary, Irish Free State, Italy, Latvia, Lithuania, Luxemburg, The Netherlands, Roumania, Sweden, Turkey, U.S.S.R., Yugoslavia.

portions of which related exclusively to Spain and some of which set up general prohibitions.<sup>17</sup> It may be assumed that the legislative and other measures drawn up with particular reference and limitation to Spain and to non-intervention in Spanish affairs will terminate with the end of the Spanish strife, or with the conclusion of the Non-Intervention Accord. Comparing the list of states not having restrictive measures in force or authorized prior to August 1, 1936, with the list of measures adopted after this date, Switzerland appears to be the only country which has placed upon its statute books a restrictive measure of general all-time application which will continue operative after the close of the Spanish civil strife.

Question may next be raised concerning the kind of restriction imposed upon exportation or transit. In the case of sixteen of the twenty-eight states under consideration, the basic measure or measures required the obtaining of a permit or authorization from some agency of the government for the exportation of arms and materials of war.<sup>18</sup> Provided the necessary permit were given in each of these states by the designated agency of the government, any given consignment of arms, ammunition or implements of war might lawfully be exported to the destination specified in the application and in the authorization. Before turning to the alternative system, it is pertinent to inquire whether permits for exportation to Spain, singled out as such, were expressly prohibited or suspended by formal legal action, such as a law, decree, or ordinance. Eight of the sixteen states decreed a prohibition,<sup>19</sup> while in the others no such distinguishing, *formal* step appears to have been taken.<sup>20</sup> In those states in which no action was taken naming Spain by law as the country to which war materials might not be allowed to be exported, the terms of the laws may be said to appear to have been adequate for a satisfactory handling of the situation. Furthermore, less formal measures, such as official notices and in-

<sup>17</sup> United Kingdom, France, Germany, Norway, Switzerland.

<sup>18</sup> Belgium, United Kingdom, Czechoslovakia, Denmark, France, Germany, Greece, Irish Free State, Italy, Latvia, Lithuania, Luxemburg, The Netherlands, Norway, Poland, Yugoslavia. The latest measures adopted by Switzerland place that state in this group for the future.

<sup>19</sup> France, Germany, Greece, Italy, Latvia, Lithuania, Luxemburg, The Netherlands (not until March 30, 1937).

<sup>20</sup> Belgium, United Kingdom (the Merchant Shipping [Carriage to Spain] Act of Dec. 3, 1936, placed the country in the other classification thereafter), Czechoslovakia, Denmark, Irish Free State (the Feb. 26, 1937, Spanish Civil War [Export of War Materials] Order, places this country in the other list thereafter), Poland, Yugoslavia.

structions, seem to have been issued making it clear that permits would not be given for goods having Spain as a destination.

The alternative system involved a complete prohibition of the exportation of arms, ammunition or implements of war. Such a system was adopted in twelve states.<sup>21</sup> Seven of these twelve states belong in the group not having restrictive measures enforceable on August 1, 1936.

Although there is no intention here to go into the details of actual foreign intervention in Spain, it may be noted in passing, however, that of the generally understood sources of arms, ammunition, and implements of war which found their way consistently or in sizable quantities into Spain, four of the sources of supply were represented by states employing the permit and authorization system, while only one or two were represented by states utilizing the absolute prohibition system. It is not intended to lay weight or stress upon this statement, however, as it cannot be demonstrated what percentage of the arms coming from these five or six states originated therein, and what percentage of the goods originated in some more obscure source but became notorious because they passed through one of these states en route to Spain, or passed to Spain via means of transportation belonging in these states. The only safe conclusion which can be drawn, perhaps, is that more depends upon the attitude and zealousness of the authorities charged with oversight of the exportation or transit of such commodities than it does upon the form and phraseology of the law which may be placed upon the statute books.

Turning to another feature of the measures adopted or enforced in connection with the Non-Intervention Declarations, it may be noted that in the measures of sixteen of the states, no complete or detailed serializations of the kinds of weapons, parts, and commodities which were to be understood as included within the terminology "arms, munitions and materials of war," were contained in those formal legal measures which were in force during the earlier phases of the Non-Intervention system.<sup>22</sup>

<sup>21</sup> Albania, Austria (the law is somewhat bi-provisional), Bulgaria, Estonia, Finland, Hungary (by the terms of the Act XIX-ex 1924, above referred to, Hungary may belong in the other classification, although the Order in Council of Sept. 4, 1936, places her in the prohibition group), Portugal, Roumania, Sweden, Turkey, U.S.S.R., Switzerland (the 1938 measures place this country in the other classification).

<sup>22</sup> Albania, Bulgaria, Finland, Greece, Hungary, Irish Free State, Italy, Latvia, Lithuania, Poland, Portugal, Roumania, Turkey, U.S.S.R., Yugoslavia, Switzerland.

No agreement existed in conventional form or was concluded among the Powers at the time of the issuance of the Declarations, setting forth in precise language the weapons and materials which were to be uniformly treated as being embraced within the phrase "arms, munitions and materials of war as well as all airplanes, mounted, or dismantled, and all ships of war," which was employed in the Declarations.<sup>23</sup> Accordingly, one of the first acts of the Non-Intervention Committee was to instruct its Secretary, Mr. Francis Hemming, to prepare a report classifying the kinds of material embargoed by each state.<sup>24</sup> Appendix 3 of the *Hemming Report* contains schedules showing the types of goods embargoed, together with the basis of action for each state. These schedules and the statements contained therein should be studied in conjunction with the formal documents reproduced in Appendix III at the back of this book.<sup>25</sup> Twenty-one schedules of commodities are listed.<sup>26</sup> As stated by Mr. Hemming in his *Report*, these are in general based upon a classification put forward by the United States at the Conference for the Reduction and Limitation of Armaments in November 1934,<sup>27</sup> although the classification is

<sup>23</sup> In an interesting opinion rendered by the Law Officers of the Crown in 1835 apropos the nature of "war-like stores" which might not be exported from Britain, it was laid down that "the term 'war-like stores' as used in the treaty in question (Quadruple Treaty of April 22, 1834), imports whatever articles are necessary for the equipment of naval or military forces . . ." F. O. 83/2368.

<sup>24</sup> *Report by Mr. Francis Hemming: British Parliamentary Paper, Spain No. 2* (1936), (hereafter cited *Hemming Report*), p. 4.

<sup>25</sup> It is regretted that the extensive nature of the *Hemming Report* prevents its reproduction herein. Copies are readily obtainable, however, from His Majesty's Stationery Office, London.

<sup>26</sup> 1—Rifles and carbines; 2—Bayonets and swords; 3—Machine guns, automatic rifles, and machine pistols of all calibres, and their mountings; 4—Revolvers and automatic pistols; 5—Guns, howitzers, and mortars of all calibres, and their mountings; 6—Ammunition for arms enumerated in 1, 3, and 4, and filled or unfilled projectiles for arms in Schedule 5; 7—Grenades, bombs, torpedoes, and mines, filled or unfilled, and apparatus for their use or discharge; 8—Tanks, armored vehicles, armor plate; 9—Flame-throwers and all other projectors used for chemical or incendiary warfare; 10—Mustard gas, lewisite, ethyldichlorarsine, methyldichlorarsine, and all other products destined for chemical or incendiary war; 11—Powder for war purposes, and explosives; 12—Aircraft, assembled or dismantled, aero engines, propellers, fuselages, aerial gun-mounts and frames, tail units, and under-carriage units; 13—Warships of all kinds; 14—Component parts of arms and munitions; 15—Range finders, sights, fire control apparatus; 16—Searchlights, signalling and wireless apparatus for war purposes; 17—Vehicles other than those in No. 8, designed exclusively for war purposes; 18—Appliances and accessories for war purposes other than those mentioned; 19—Protective materials; 20—Specialized machinery and plants for the manufacture of arms and munitions; 21—Sporting arms and munitions. *Report, loc. cit.*, pp. 19-57.

<sup>27</sup> Department of State, *Press Releases*, No. 273, p. 291.

more extended. They differ considerably from those adopted by the Coördination Committee at Geneva in October, 1935,<sup>28</sup> and from those embraced in the Presidential Proclamations putting the American Neutrality Resolutions into effect.<sup>29</sup> Otherwise, the Hemming Schedules are essentially the invention of the Secretary himself, approved by the Non-Intervention Committee.<sup>30</sup>

From a careful examination of Appendix 3 of the *Hemming Report*, it will be noted that in many instances the Secretary has listed a given country as having prohibited the exportation of a specific class of arms and war material where a reference to the legislative or other measures contained in Appendix III of this book (which are reproductions of the material supplied by these countries to the Non-Intervention Committee) shows that the said country has merely forbidden persons "to export, reëxport and transship arms, ammunition, war material, vessels of war, aeroplanes, unassembled, assembled or dismantled, to Spain" (to quote the Bulgarian Order as an example). In the *Hemming Report* obscure phraseology [*sic*] "Covered by Order-in-Council of 31st August, 1936," is used in all such instances. Question might well arise as to many inclusions or exclusions of adequate coverages respecting the measures of many of the states but for a statement which appears on page 7 of the *Report*, indicating the submission of the schedules to each of the states and verification by their own authorities.<sup>31</sup> From this, it must be gathered that what was set down in broad terms in the laws and decrees would be given an interpretation in administration sufficient to cover the various items listed in the Hemming Schedules.

According to the *Hemming Report*, all participants took measures to prohibit the exportation of the more orthodox arms, ammunition

<sup>28</sup> League of Nations, *Official Journal*, Special Supplement, No. 150, p. 3.

<sup>29</sup> Department of State, *Press Releases*, April 10, 1936; May 1, 1937.

<sup>30</sup> *Hemming Report*, *loc. cit.*, p. 5.

<sup>31</sup> "9. As arranged at the meeting of the Committee held on the 14th September, 1936, I submitted the drafts of Appendices 1 and 3 to each delegation on the 19th September, 1936, with a request that each delegate should—

"(a) check the entries made in respect of his country;

"(b) confirm those entries in respect of which only a tentative entry had been made; and

"(c) furnish the information necessary to complete those entries in respect of his country which at that time had been left blank owing to lack of information.

"10. I have since received comments from all the delegations represented on the Committee." *Hemming Report*, *op. cit.*, p. 7.



and war materials contained in Schedules 1, 3, 5, 6, 7, 9. In the case of the other schedules, however, one or more states did not prohibit the exportation of the commodities in question. Inasmuch as there was no treaty agreement on the particular articles to be embargoed, *it cannot be maintained that the states not prohibiting the export of certain articles were violating the Non-Intervention Accord or international law.* The following tabulation indicates the name of the state and the numbers of the schedules the exportation of the articles of which the state *did not* prohibit. The states are arranged in order of the number of exceptions made.

Irish Free State	2, 8, 10, 12, 13, 15, 16, 17, 18, 19, 20.
The Netherlands	2, 10, 11, 14, 15, 16, 17, 19, 20.
Luxemburg	2, 13, 15, 16, 17, 18, 19, 20, 21.
Belgium	2, 15, 16, 17, 18, 19, 20, 21.
Poland	15, 16, 17, 18, 19, 20, 21.
Germany	2, 4, 17, 19, 20, 21.
Norway	16, 17, 18, 19, 20.
United Kingdom	16, 17, 19, 20.
Italy	19, 20, 21.
Turkey	19, 20, 21.
Sweden	16, 19, 20.
Albania	19, 20, 21.
Greece	19, 20, 21.
Austria	20, 21.
Czechoslovakia	2, 21.
Hungary	20, 21.
Soviet Union	20, 21.
Switzerland	19, 21.
Portugal	20, 21.
Finland	19, 21.
Denmark	21.
France	17.
Lithuania	19.
Roumania	21.

Only four states—Bulgaria, Estonia, Latvia, and Yugoslavia—made no exceptions in their embargoes.

One of the significant features of the Hemming Schedules and of the Non-Intervention Accord is that, taken in conjunction with the 1925 Geneva Convention for the Supervision of the International Trade in Arms and Ammunition, the Proposal on the Export of Arms,

Ammunition and Implements of War adopted by the Sanctions Coördination Committee in 1935, and the schedules contained in the Presidential Proclamations putting into force the Congressional resolutions regarding United States neutrality, there is evidence of gradual international agreement on the commodities which constitute "arms, ammunition and implements of war." In essence, the evolution of such lists by states not participating in a war amounts to an indirect method of attempting to determine for the belligerents what they may and may not treat as contraband of war.<sup>32</sup> This is particularly true in the case of civil war where the non-participating states are numerous and powerful enough to impose their will upon the contestants. The influence of such listing will grow less in proportion to the relative strength of the warring and neutral states. While many of the states taking part in the Spanish Non-Intervention Plan refused to embargo certain articles, it is to be pointed out, however, that in any struggle where there are legally recognized belligerents, the excepted goods would nevertheless be regarded as contraband of war and confiscable. Noteworthy are the large number of exceptions of "protective materials." Self-defense is as much a part of the science of warfare as offense, and, indeed, reports by skilled observers in Spain confirm the old belief that defense is still a most vital and successful form of warfare. The possession or lack of "protective materials" might easily spell the difference between victory and defeat in civil or international war, and the distinction between such materials and other war supplies would be immaterial so far as exempting the goods from capture by a lawful belligerent would be concerned. The extension or withholding of "protective materials" in the present situation might well amount to direct or indirect interference.

It is observable that many states left open the door for trade in "sporting arms and ammunition." It is not easy to distinguish between sporting rifles and army rifles, so far as the destructive qualities of the weapons are concerned. It seems quite conceivable that a very effective civil warfare might be conducted in Spain on the basis of sporting arms and munitions, particularly when it is possible to secure so many other useful war materials and machinery as well. Tanks, airplanes, artillery, grenades, are desirable equipment for the military commander. But after all is said and done the Spanish war and the

<sup>32</sup> See page 97 below.

World War still demonstrate that it is the infantryman with his rifle and cartridges who finally settles the issue.

A final question concerning the embargo measures is, What penalty or sanction was provided for violation? Specific provision for a fine or imprisonment appears in the laws of seven states.<sup>33</sup> In five instances reference is made to other laws in the matter of punishment.<sup>34</sup> In seven cases the matter is placed under the jurisdiction of a given Minister or group of administrative authorities for enforcement, without reference to any penalty or other law.<sup>35</sup> No mention of punishment or provision therefor by reference to other law or to designated authorities is made in the measures of nine states.<sup>36</sup> In this last case it should not necessarily be concluded, however, that adequate means of enforcement and punishment are lacking. With one or two exceptions, no considerable traffic in arms to Spain is reported to have taken place from these states.

#### THE NON-INTERVENTION COMMITTEE

For the coördination of the activities of the several Powers, and for the facilitation of the international accord to stop foreign intervention, it was decided to constitute an International Non-Intervention Committee to meet in London. Here were pooled the official documents relating to the enforcement of the accord, the presentation of charges of violations thereof, and the negotiation of ways and means of perfecting the accord in practice.

The first meeting of the Committee, composed of diplomatic representatives of the states participating in the Non-Intervention Accord was held at the British Foreign Office, September 9, 1936. Mr. W. S. Morrison was elected president, but was shortly succeeded by Lord Plymouth. Mr. Francis Hemming of England was made executive secretary. At the second session of the Committee, September 14, a subcommittee was created, composed of the delegates of Belgium,

<sup>33</sup> Austria (imprisonment up to 6 months and fine); United Kingdom (fine); Denmark (imprisonment up to 6 months and fine); Finland (fine, if a more severe punishment not provided by law); Germany (imprisonment up to 1 year and fine); The Netherlands (imprisonment up to 2 months and fine); Norway (imprisonment up to 3 months and fine).

<sup>34</sup> Irish Free State, Lithuania, Portugal, Sweden, Switzerland.

<sup>35</sup> Belgium, Bulgaria, France, Italy, Luxemburg, Poland, Roumania.

<sup>36</sup> Albania, Czechoslovakia, Estonia, Greece, Hungary, Latvia, Turkey, U.S.S.R., Yugoslavia.

Britain, Czechoslovakia, France, Germany, Italy, Sweden, and Soviet Russia to aid the president in facilitating procedure and to consider and make recommendations to the full committee.<sup>37</sup>

#### RULES OF PROCEDURE

One of the critical first decisions of the Committee was the adoption of a body of rules governing the procedure in entertaining complaints of violations of the accord. The early drafting of such rules was necessitated by the refusal of Portugal to be present until such were drafted and approved by her. The rules, as announced at the close of the fourth session, September 28, were in substance as follows: (1) hope is expressed that few complaints will be received by the Committee; (2) if such are received, the Committee will examine and verify the exactitude of the facts; (3) the Committee will proceed with the least possible delay; (4) the Committee shall not entertain a complaint unless it emanates from a responsible source and is considered as of sufficient importance and based on undoubted grounds of evidence; (5) *only complaints received from governments participating in the international accord will be considered and examined*; (6) the Committee believes a government should not submit a charge unless it has taken reasonable measures to assure itself that the claim is justified and sufficiently important to submit, even though it be obviously impossible for a government to determine without discussion whether a violation has or has not been committed; (7) all complaints shall be submitted in writing to the secretary who will distribute them at once to all members; (8) on the submission of a complaint the president will communicate with the representative of the government charged with violation and demand that his government furnish the Committee with "such explanations as are necessary to determine the facts in the case"; (9) after the reception of the observations, the Committee will take the steps which appear to it to be necessary in each case to determine the veracity of the charges.<sup>38</sup>

The general tenor of the rules was such as to discourage as far as possible the presentation of complaints to the Committee. If, nevertheless, complaints were forthcoming, they had to be presented by a government which was taking part in the international accord. By

<sup>37</sup> *L'Europe Nouvelle*, March 13, 1937, Supp., p. vi.

<sup>38</sup> *L'Europe Nouvelle*, March 13, 1937, Supp., pp. vi-vii.

this clever move the Committee insulated itself against consideration of charges preferred by private individuals, newspaper observers, international organizations, the Madrid Government and the rebels, and governments other than those meeting in London. The Committee agreed to do nothing more than to consider the facts and evidence. No provision was made for the publication of a report, either to the governments concerned or to the world. No provision was made for the application of any form of sanctions against the violator. No provision was made for the reference of possible legal questions to any tribunal, or for appeal after committee consideration to the League of Nations or any other international body.

At its meeting on October 28, 1936, the Committee considered charges presented to it by the British Government in behalf of the Madrid authorities, and the information presented in rebuttal by the Italian and Portuguese Governments.<sup>39</sup> In each instance it found that sufficient evidence had not been presented to enable the Committee to reach any conclusion that one side had or had not violated the accord.<sup>40</sup> November 12 the Committee voted that the Italian charges against Soviet intervention were not supportable by the evidence produced and that the Soviet Government could not in consequence be held to have violated its agreement.<sup>41</sup>

Numerous other charges of failure to abide by the accord were brought before the Committee, but, as before, all were dropped without action of a positive nature. It was admitted by Mr. Eden in the House of Commons on several occasions that the agreement had not worked as well as had been hoped and that there had been violations, but he said in extenuation that the situation was not as bad as it would have been had there been no accord. The logic of this may be questioned, for it seems undesirable that nations should continue making engagements only to break them, and it has never been and cannot be successfully demonstrated that there would have been general European intervention in Spain had there been no accord. The accord had the result of focusing the attention of everyone on Spain, and when one party engaged in under-cover intervention, national prestige was a bit at stake if others did not keep pace. Drawing all of

<sup>39</sup> *Ibid.*, pp. i, ii.

<sup>40</sup> *Ibid.*, p. vi.

<sup>41</sup> *New York Times*, Nov. 13, 1936.

the Powers into the accord drew them into the issues of the rebellion.

By the middle of November, 1936, an important change took place in the scheme of things. The attention and work of the Committee was turned away from violations to the consideration of new schemes for observing and watching events at close range so that the Committee might have first-hand information at its disposal. Progress was very slow and confused, and in the interval before the attainment of a new agreement, large quantities of contraband goods and volunteers found their way into Spain.

Before noting the evolution of the new plan, the appeal of Spain to the Council of the League of Nations in November, 1936, must be noted to keep events in their proper chronological order. On November 27, Spain appealed to the Council to consider the "armed intervention" of Germany and Italy in Spain and the circumstances threatening to disturb international peace under the terms of Article 11 of the Covenant.<sup>42</sup> It was charged that there was "danger to peace arising out of a new form of aggression, which consisted in a State making war to all intents and purposes, but without declaring war, by first provoking a rebellion within another State and then giving military assistance to the rebels."<sup>43</sup> The League was asked to "make good these shortcomings by setting up a system of control which will render the agreement effective."<sup>44</sup> The only action taken by the Council was the adoption of a resolution giving moral support to the existent and proposed expansion of the Non-Intervention Plan. It did affirm that there was an international obligation of non-intervention in the internal affairs of others, but it did not attempt to condemn the actions of any particular states.<sup>45</sup>

#### AGREEMENT TO PROHIBIT THE DEPARTURE OF VOLUNTEERS

In December and January, the British and French Governments, becoming alarmed at the supplies and volunteers pouring into Spain, endeavored by diplomatic means outside of the London Committee to stem the tide and to stop the fighting.<sup>46</sup> The mediation proposal failed utterly but the other suggestions fared better. In an important

<sup>42</sup> League of Nations, *Official Journal*, Jan. 1937, p. 35.

<sup>43</sup> *Ibid.*, p. 8.

<sup>44</sup> *Ibid.*, p. 10.

<sup>45</sup> *Ibid.*, pp. 18-19.

<sup>46</sup> *L'Europe Nouvelle*, April 10, 1937, Supp., pp i-vii.

dispatch of January 9, 1937, the British Government urged immediate national prohibitions upon recruiting of volunteers for Spain, and the assimilation of the volunteering problem to the program of observation and control being worked out by the Committee.<sup>47</sup> As a contribution to the realization of this end, the British Foreign Enlistment Act was officially put into operation January 10. The French Government at once stated its readiness to take a similar step if the others would do likewise,<sup>48</sup> and it introduced and secured the enactment of the necessary legislation.<sup>49</sup> Unusual significance attaches to the passage of this law, as it is the first time France has had a satisfactory law dealing with enlistment in time of civil strife abroad.<sup>50</sup> Unfortunately, its duration was limited to six months and it was made applicable only to Spain. As a result of the British initiative, the Powers in the Non-Intervention Committee reached the agreement on February 16 that all volunteering should be banned as from February 20.<sup>51</sup>

#### NATIONAL MEASURES FOR THE RESTRAINT OF VOLUNTEERS

An examination of the legislative and other measures serving to restrain the departure of volunteers for Spain<sup>52</sup> will reveal that prior to the negotiation of the agreement of February 16, restrictive provisions of one sort or another existed in the laws of seventeen of the participating states.<sup>53</sup> In eleven of the seventeen instances, the

<sup>47</sup> *London Times*, Jan. 11, 1937.

<sup>48</sup> *L'Europe Nouvelle*, *loc. cit.*, p. 7. See *ibid.*, April 24, 1937, Supp., pp. 1-2, for replies of other states.

<sup>49</sup> Text of French law may be found in Appendix V, together with the laws and decrees of all other states.

<sup>50</sup> *A.J.I.L.*, Vol. XXXI (1937), p. 235, n. 51.

<sup>51</sup> *New York Times*, Feb. 17, 1937.

<sup>52</sup> See Appendix V for texts of such measures.

<sup>53</sup> Albania, Civil Code, April 1, 1929.

Austria, Citizenship Law, July 30, 1925; Penal Code, revised 1936.

Belgium, Law *re* Militia and Recruitment, Dec. 31, 1936.

United Kingdom, Foreign Enlistment Act, 1870.

Bulgaria, Nationality Law, Dec. 31, 1903.

Czechoslovakia, Defense of the State Act, May 13, 1936.

France, Law to Prevent Departure of Volunteers to Spain, Jan. 21, 1937.

Germany, Nationality Law, July 22, 1913.

Greece, Civil Rights Law, Oct. 29, 1856, amended.

Italy, Nationality Law, June 13, 1912; Citizenship Law, Jan. 31, 1926.

The Netherlands, Nationality Law, Dec. 12, 1892.

Poland, Nationality Law, Jan. 20, 1920; Notice *re* Enlistment for Spain, Dec. 11, 1936.

Portugal, Penal Code.

laws were nationality or citizenship laws and provided for loss of citizenship for service in a foreign army.<sup>54</sup> In five of the seventeen instances, punishment was entailed by way of fine or imprisonment, rather than by loss of citizenship.<sup>55</sup> In only two cases was a forthright prohibition set up against foreign military service and this appeared in laws specifically directed against Spain.<sup>56</sup> Recruiting and enlisting, or inducing thereto, appears to have been unlawful by the laws of only four states, other than those two adopting laws after the outbreak of the strife and specifically relating to Spain.<sup>57</sup> It is possible, of course, that other provisions of law in numerous states may prohibit this practice. It seems reasonable to think, however, that had such provisions been existent they would have been relied upon in connection with volunteering for Spain, and that entirely new legislation would not have been enacted, as seems to have been the case in all of the countries save Britain, Czechoslovakia and Poland.<sup>58</sup> From this it might be concluded that the majority of the states of Europe did not regard volunteering for or engaging in military service in a foreign civil strife as contrary to or forbidden by existing international law.

Subsequent to the 14th of February, 1937,<sup>59</sup> restrictive measures were adopted by twenty-five of the twenty-eight states adhering to

Roumania, Nationality Law, Feb. 23, 1924.

Turkey, Nationality Law, May 28, 1928.

Yugoslavia, Citizenship Law, Sept. 21, 1928; Law *re* Organization of Army and Navy, Sept. 30, 1931.

Switzerland, Order Prohibiting Participation in the Hostilities in Spain, Aug. 14, 25, 1936.

Note—A circular was issued by the Minister of the Interior of Roumania to Districts' Prefects, Dec. 12, 1936, forbidding departure for military service in Spain. No legal basis or penalty was cited.

<sup>54</sup> Albania, Austria, Bulgaria, Germany, Greece, Italy, The Netherlands, Poland, Roumania, Turkey, Yugoslavia.

<sup>55</sup> Austria, Belgium, United Kingdom, Czechoslovakia, Portugal.

<sup>56</sup> France, Switzerland.

<sup>57</sup> Austria, Belgium, United Kingdom, Czechoslovakia.

<sup>58</sup> France and Switzerland are excluded from this group because of the *ad hoc* and specialized nature of their laws, enacted after the commencement of the Spanish civil strife and applicable only to it.

<sup>59</sup> It will be recalled that Germany and Italy proposed curbs on volunteering at the time of their Declarations in Aug. 1936; that active negotiations toward an agreement began on Jan. 9, 1937, through the initiative of the British Government; that the Committee agreed on Feb. 16 that volunteering should be prohibited as from Feb. 20, 1937.



the non-intervention policy.<sup>60</sup> With the exception of the Norwegian law, all measures which were adopted after this date were specifically enforceable only against volunteering or departing for military service in Spain or its possessions. The Norwegian Law of March 19 prohibited: "1. That anyone in this country shall enlist for foreign armed service for a country of which he is not a citizen, and of which he has not been a citizen lately. 2. That anyone shall travel from Norway to such a country to take part in war." In the decree adopted the same day it was ordained that: "1. It is prohibited in this country to enlist for war service for either of the parties in the civil war in Spain, or to travel from this country to Spain . . . to take part on either side in the Spanish civil war." Judging from the *ad hoc* form of the measures which were taken by the other twenty-four states above noted, it would appear that the states had no thought of establishing a new principle of international law generally binding in all future cases of civil strife.

The measures may now be considered for their substance. In twenty-three of the states, rigid prohibitions were established.<sup>61</sup> Austria, the United Kingdom, Czechoslovakia, Poland and Roumania, however, provided penalties for enlisting or taking service in the absence of having obtained special permission from the government therefor. In twenty-four states "enlistment" was made an illegal act.<sup>62</sup> Recruiting or inducing others to take up military service on behalf

<sup>60</sup> Albania, Feb. 20, 1937.  
Austria, July 10, 1937.  
Belgium, June 11, 1937.  
United Kingdom, March 10, 1937.  
Bulgaria, April 23, 1937.  
Denmark, Feb. 26, 1937.  
Estonia, Feb. 20, 1937.  
Finland, April 30, 1937.  
France, Feb. 18, 1937.  
Germany, Feb. 18, 19, 20, 1937.  
Greece, March 2, 1937.  
Hungary, Feb. 20, March 6, 9, 1937.  
Irish Free State, Feb. 24, 1937.

Italy, Feb. 15, 19, 1937.  
Latvia, Feb. 23, 1937.  
Lithuania, March 12, April 10, 1937.  
Luxemburg, April 10, 1937.  
The Netherlands, June 11, 1937.  
Norway, March 19, 1937.  
Portugal, Feb. 27, 1937.  
Roumania, Feb. 19, 1937.  
Sweden, Feb. 26, March 5, 1937.  
Turkey, Feb. 20, 1937.  
U.S.S.R., Feb. 20, 1937.  
Yugoslavia, March 3, 1937.

<sup>61</sup> Albania, Belgium, Bulgaria, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Irish Free State, Italy, Latvia, Lithuania, Luxemburg, The Netherlands, Norway, Portugal, Sweden, Turkey, U.S.S.R., Yugoslavia, Switzerland.

<sup>62</sup> Austria, Belgium, United Kingdom, Bulgaria, Czechoslovakia, Estonia, Finland, France, Germany, Greece, Irish Free State, Italy, Latvia, Lithuania, Luxemburg, The Netherlands, Poland, Portugal, Roumania, Sweden, Turkey, U.S.S.R., Yugoslavia, Switzerland.

of either party in Spain was made unlawful in twenty-two states.<sup>63</sup> In Greece, "conscription of any sort" was declared unlawful. Departure for the purpose of participating in the military service of either party or in hostilities in Spain was rendered illegal in nineteen states.<sup>64</sup> Ten states forbade the transit of volunteers,<sup>65</sup> while thirteen made transportation of volunteers destined for military service in Spain an illegal act.<sup>66</sup> By the laws of twenty-three states, taking part in the armed forces of either party in Spain was either prohibited or an act subjecting the participant to severe penalties.<sup>67</sup>

Turning to the administrative means of controlling volunteering, it may be noted that passport and visa control was instituted in eighteen states;<sup>68</sup> police and border supervision provided for in nineteen states;<sup>69</sup> miscellaneous administrative and ministerial regulatory controls authorized in twenty-one states.<sup>70</sup> In thirteen cases express or fairly implicit provision was made empowering the authorities to curb persons seeking to leave the national domain "contemplating" or "intending" to make their way to Spain to join the forces fighting there.<sup>71</sup> In this latter connection it may be interesting to note that the Italian law authorized measures against persons "intending to render service," and "consenting to render service with the forces fighting in the territories indicated."

<sup>63</sup> Albania, Austria, Belgium, United Kingdom, Bulgaria, Czechoslovakia, Estonia, Finland, France, Germany, Irish Free State, Italy, Latvia, Luxemburg, The Netherlands, Portugal, Roumania, Sweden, Turkey, U.S.S.R., Yugoslavia, Switzerland.

<sup>64</sup> Austria, Belgium, United Kingdom, Bulgaria, Denmark, Estonia, France, Germany, Hungary, Irish Free State, Italy, Latvia, Luxemburg, Portugal, Roumania, Sweden, U.S.S.R., Yugoslavia, Switzerland.

<sup>65</sup> Albania, Belgium, Bulgaria, Germany, Italy, Luxemburg, Portugal, Roumania, U.S.S.R., Yugoslavia.

<sup>66</sup> United Kingdom, Denmark, Estonia, Finland, France, Hungary, Irish Free State, Latvia, The Netherlands, Sweden, U.S.S.R., Yugoslavia, Switzerland.

<sup>67</sup> Austria, United Kingdom, Bulgaria, Estonia, Finland, France, Germany, Greece, Hungary, Irish Free State, Italy, Latvia, Lithuania, Luxemburg, The Netherlands, Poland, Portugal, Roumania, Sweden, Turkey, U.S.S.R., Yugoslavia, Switzerland.

<sup>68</sup> Albania, Austria, United Kingdom, Denmark, Estonia, France, Germany, Hungary, Irish Free State, Italy, Latvia, Lithuania, Luxemburg, The Netherlands, Roumania, Sweden, U.S.S.R., Yugoslavia.

<sup>69</sup> Austria, Denmark, Finland, France, Germany, Greece, Hungary, Irish Free State, Italy, Latvia, Lithuania, Luxemburg, The Netherlands, Roumania, Sweden, Turkey, U.S.S.R., Yugoslavia, Switzerland.

<sup>70</sup> Austria, Belgium, Bulgaria, Czechoslovakia, Denmark, Estonia, Finland, France, Hungary, Irish Free State, Italy, Latvia, The Netherlands, Poland, Portugal, Roumania, Sweden, Turkey, U.S.S.R., Yugoslavia, Switzerland.

<sup>71</sup> Austria, Bulgaria, Denmark, Estonia, Hungary, Irish Free State, Italy, Luxemburg, The Netherlands, Roumania, Sweden, U.S.S.R., Switzerland.

In all countries a penalty of some nature was provided for enlistment, recruiting, or service with the forces fighting in Spain. Fines were prescribed in fourteen instances; <sup>72</sup> imprisonment of varying lengths of time in twenty-one laws; <sup>73</sup> loss of citizenship, either mandatory or discretionary, in thirteen laws; <sup>74</sup> and miscellaneous provisions in eight laws.<sup>75</sup>

### THE SEARCH FOR AN INTERNATIONAL CONTROL

Notwithstanding the adoption of the arms embargo and the volunteers prohibition accords, large numbers of persons and goods continued to stream into Spain by one means or another to aid the contestants in the prosecution of the war. In order to try to stop the gaps and to bring about a loyal compliance with the accords, the Non-Intervention Committee undertook the consideration of various plans designed to achieve these ends.

The first plan considered by the London Committee for improving its knowledge of the introduction of goods and volunteers into Spain was to station a corps of observers representing the Committee inside of Spain in strategic ports and places of entry. Involving thus a servitude upon Spain, this project necessitated the consent of the two authorities in Spain. Such consent was ultimately refused by both sides.<sup>76</sup> The next alternative was to endeavor to achieve the same end by posting observers outside of Spanish jurisdiction. France and Britain readily agreed to the stationing of an international inspectorate within their respective territories bordering upon Spain. Portugal refused, however, to tolerate such a compromise of her sovereignty and the impasse had to be referred to a special sub-com-

<sup>72</sup> Austria, United Kingdom, Denmark, Finland, France, Greece, Irish Free State, Italy, The Netherlands, Norway, Portugal, Sweden, Yugoslavia, Switzerland.

<sup>73</sup> Austria (up to 10 years); Belgium (up to 6 months); United Kingdom (up to 2 years); Bulgaria (length unspecified); Czechoslovakia (up to 5 years); Denmark (up to 3 months); Estonia (up to 3 years); Finland (up to 1 year); France (up to 6 months); Germany (length not specified); Greece (up to 6 months); Hungary (up to 15 days); Irish Free State (up to 2 years); Italy (up to 1 year); Lithuania (up to 6 months); Luxemburg (up to 6 months); The Netherlands (up to 1 year); Norway (up to 3 months); Sweden (up to 6 months); Yugoslavia (up to 30 days); Switzerland (up to 6 months).

<sup>74</sup> Albania, Austria, Bulgaria, Germany, Greece, Hungary, Italy, The Netherlands, Poland, Portugal, Roumania, Turkey, Yugoslavia.

<sup>75</sup> Belgium, Latvia, The Netherlands (deportation of aliens), Portugal (banishment of aliens), Roumania, Turkey, U.S.S.R., Switzerland.

<sup>76</sup> *Le Temps*, Dec. 24, 1936, Jan. 10, 1937.

mittee.<sup>77</sup> The Portuguese difficulty was ultimately resolved by means of an agreement between Britain and Portugal, accepted by the Committee, providing that the Portuguese border should be observed by British officials attached to the British Embassy at Lisbon. The Portuguese position was carefully defined in an official communiqué in the *London Times*, February 22.<sup>78</sup>

The British officials in Portugal for this purpose embraced an administrator, deputy administrator, and 130 observers. The functions of these observers were delimited as "strictly supervisory and civilian," and any reports which they found it necessary to make were to be sent only to the British Ambassador at Lisbon, who was authorized to take the matter up exclusively with the Portuguese Government. Diplomatic immunities were conferred on the observers on the individual undertaking that there would be absolutely no divulging of what was seen to anyone save the administrator and the British Ambassador.<sup>79</sup>

The Portuguese patrol was completely separated from the international patrol and more circumscribed in its functions and usefulness. It may be said authoritatively that no reports were made to

<sup>77</sup> *Ibid.*, Feb. 11, 1937. *L'Europe Nouvelle*, *loc. cit.*, p. iv, misdates the meeting as Feb. 20.

<sup>78</sup> "1. Portugal has not departed from her earlier attitude of not admitting international control in her territories. Such control would constitute a terrible precedent for the liberty and independence of small countries.

"2. Control of the ports and coastline was never suggested, and if it had been by a certain Power with which Portugal has no relations, Portugal could not have discussed or collaborated.

"3. Not being responsible for the events in Spain, realizing the dangers and not wishing not to help in their solution, and in the common interest, Portugal, at the instance of various friendly Powers, has invited the British Government to send observers to be attached to the British Embassy and Consulates, to see to the rigorous fulfillment of Portugal's obligation for non-intervention.

"4. Great Britain was chosen because of Portugal's confidence in her attitude of impartiality and of the alliance between the two countries.

"5. The rigidly defined invitation is no modification of the control plan formula. If Portugal had refused to invite observers it would have been impossible to prove at first-hand her correct attitude to these questions.

"6. The observers will be given all facilities, but it is emphasized that they will not possess the powers originally suggested for the international controllers, nor will they be recognized as delegates of an international organization.

"7. Portugal hopes that other Governments, not ignoring Portugal's fundamental principles, which she has constantly upheld, will recognize her good intentions. But if not, and should Portugal then be convinced that her continued presence on the London Committee was a disturbing element, she would withdraw from that Committee." On the British-Portuguese alliance, see *Br. & For. St. Pap.*, Vol. I, pp. 462-563.

<sup>79</sup> *London Times*, March 2, 1937.

the Non-Intervention Committee regarding the Portuguese frontier patrol, and that the Committee made no inquiries of the British observers. It is unfortunate that Portugal should have been unwilling to proceed in step with Britain and France in the international scheme, for surely with British reaffirmation of the binding force of her old alliance with Portugal, no more harmful or serious precedent could have been established by international observation within Portuguese than in British and French jurisdictions. There was no denial of the legal equality of states at issue, and a precedent established in a great Power's domain is as historic as one in a small state.

Adoption of the second part of the new arrangement, a high seas international naval patrol, was impeded for a time by a dispute over the Powers to engage in the patrol and over the coördination between the participating units. It was finally agreed that all Powers were legally entitled to participate, whereupon the Russian and Portuguese Governments withdrew from active utilization of their right, leaving the duty to the four great European naval Powers.<sup>80</sup>

The third part of the plan providing for the system of merchant ship observation was most readily agreed upon and incorporated.

#### THE MARCH 8, 1937, OBSERVATION SCHEME

March 8, the Non-Intervention Committee adopted a resolution recording unanimous agreement on the Observation Scheme to be put into effect around the Spanish possessions. The resolution<sup>81</sup> took note of the accord of February 16 relative to prohibiting volunteers; the desirability of establishing a "system of observation round the frontiers" of Spanish possessions for "ascertaining whether the Agreement is being observed"; the British-Portuguese agreement; the satisfaction of Britain that the purpose of the observation scheme could be carried out in Portugal, and her undertaking to transmit information to the Committee. It is to be noted that the latter appears to be technically incompatible with the special British-Portuguese arrangement, although it may be said that no difficulty has arisen, since Britain has not transmitted any information to the Committee or been called upon to do so.

<sup>80</sup> London *Times*, Feb. 27, 1937. The schemes assigned definite portions of the high seas off the Spanish coast to each of the four Powers for naval patrol.

<sup>81</sup> The text of the resolution and the scheme will be found in Appendix VI. They are printed as a *British Parliamentary Paper*, Spain, No. 1 (1937), Cmd. 5399.

It was agreed by the Committee and the Powers on March 8 that in order to facilitate the Observation Scheme, and to provide a uniform basis of observation and report, all of the "arms, ammunition and materials of war" embraced in Schedules 1-14 of the Hemming classification should thereafter be prohibited from going to Spain by all of the participants, and the observers should watch particularly for, and report on, attempted importations of these goods into Spain. When this agreement was made, a number of states were allowing certain of these goods to be exported, to wit: Irish Free State (Schedules 2, 8, 10, 12, 13); The Netherlands (2, 10, 11, 14); Luxemburg (2, 13); Belgium (2); Germany (2, 4); Czechoslovakia (2). These states undertook to adopt the measures necessary to forbid their future exportation. This was accomplished so that by the time the Observation Scheme actually went into operation, goods in Schedules 1-14 were embargoed by all participants.<sup>82</sup>

In order to clarify the Observation Scheme and to emphasize its significance, it may be useful to point out (1) the international organization established, (2) the powers and duties of the various instrumentalities, and (3) the legal and other obligations assumed by the states.

Eight international agencies were recognized or created: (1) The *Non-Intervention Committee*; (2) An *International Board for Non-Intervention in Spain*, composed of a chairman (Vice-Admiral Van Dulm of The Netherlands), selected by the Non-Intervention Committee, and one representative each selected by the British, French, German, Italian, Soviet, Greek, Norwegian, and Polish Governments, plus a secretary; (3) Two *Chief Administrators*, one for the patrol on the Franco-Spanish frontier (Colonel Lunn of Denmark), and one for the observation of merchant ships (Rear Admiral Olivier of The Netherlands), chosen by the Non-Intervention Committee; the Administrator for sea observation at Gibraltar also acts as Administrator for the land frontier between Gibraltar and Spain (Captain Dagada of Turkey); (4) A group of *Administrators* and *Deputy Administrators* in charge of the various patrol zones and observation posts, appointed by the International Board; (5) A corps of *Observing Officers* (130 for the Franco-Spanish frontier; <sup>83</sup> 5 for the Gibralt-

<sup>82</sup> A 15th category [Serial No. 10] was added. "Special carriages for machine guns, limbers, artillery wagons and military pack-saddlery."

<sup>83</sup> The statement which appeared in the *London Times*, July 14, 1937, that there were 30 observers on the French frontier was incorrect. Thirty were centered in Perpignan.

tar-Spanish frontier; 550 for ship observation), recruited and administered by the International Board; (6) A *Naval Patrol*, composed of naval vessels of Britain, France, Germany, and Italy, occupying stations agreed upon by the Non-Intervention Committee and set forth in the control scheme, engaging in certain specified activities, but designated by and conducting themselves according to the dictates of their own states and responsible thereto; (7) An *International Fund*, subscribed to by the participating states for defraying the cost of the plan, minus the naval patrol, and administered by the International Board through an (8) *Accounting Officer* of the International Fund (Mr. Francis Hemming), chosen by the Non-Intervention Committee.

The Non-Intervention Committee was made the general supervisory organization, but it was not necessarily nor always an appellate body from the International Board. It was the agency that was to settle questions of principle, diplomatic difficulties, take general supervision over the ship observation and naval patrol parts of the plan, and to review reported violations. Specifically its functions were to:

1. Deal with questions involving the general principle of the plan (Paragraph 2).

2. Call attention of the International Board to any cases of violation of the Non-Intervention Agreement reported to it by the governments (Paragraph 5(3a)).

3. Appoint Ship Observing Officers (Paragraph 6a).

4. Receive reports from the International Board of violations reported to it of ships unloading forbidden goods or volunteers in Spanish waters (Paragraph 9c).

5. Approve payments out of the International Fund (Paragraphs 16, 21).

6. Receive notifications from states of the actions which they took to prevent vessels from passing from their territorial waters directly into Spanish territorial waters (Paragraph 29).

7. Receive reports from the governments, and directly from the Naval Patrol, of ships of the participating states which passed through the patrol zones; ships which appeared without first having called at an Observation Port for embarking an Observing Officer; ships which refused to stop for "observation" by the Naval Patrol (Paragraphs 30, 39).

8. Give approval to any special agreement which might be made for the establishment off Spanish waters of "focal areas," through which ships of the participating states must pass for observation by the Naval Patrols (Paragraphs 36).

9. Receive reports of penal or other actions taken by the govern-

ments against the masters or owners of vessels entitled to fly their flag who had violated the Non-Intervention Agreement, or the scheme of observation (Paragraphs 39, 40).

10. Take such steps as might be necessary to render the present scheme effective, if it were not found so in operation (Paragraph 48).

The International Board was the main administrative agency of the scheme.<sup>84</sup> With regard to the operation of the plan, its jurisdiction was more closely related to the land observation work than was that of the International Committee. Specifically its duties were to:

1. Administer the Observation Plan and care for staff arrangements (Paragraphs 2, 5d, 19).

2. Receive communications from the Land Frontier Observers, including reports of violations of the Non-Intervention Agreement (Paragraphs 5(1), 5(3b) ).

3. Call upon the Land Frontier Administrators to investigate and report on any violations called to its attention by the Committee (Paragraph 5(3a) ).

4. Hold the Chief Administrator of the Ship Observation staff responsible for the organization of the Observation Ports and the disciplining of the Observing Officers (Paragraph 7).

5. Receive reports from the Administrators of the Observation Ports of ships of the participating states which stopped and embarked Observing Officers, together with the names of the latter, and also the reports of the Observing Officers on the actions of the vessels when in Spanish waters (Paragraph 9).

6. Receive reports from the governments of penalties, legal or otherwise, inflicted upon the masters or owners of vessels unloading goods or persons in contravention of the Agreement (Paragraph 10f).

7. Supervise special arrangements for the continuous stationing of Observing Officers upon vessels regularly engaged in trading with Spanish ports, and making reasonably frequent changes in the personnel (Paragraph 19).

8. Administer the International Fund (Paragraph 53).

9. Report to the International Committee the progress of the Observation Scheme (Paragraph 56).

The functions of the British Observing Officers on the Portuguese frontier have already been described. The rights and privileges of the international Land Frontier Observers in the British and French territories adjoining Spain embodied:

<sup>84</sup> The International Board was formally incorporated under the laws of England. *London Times*, March 18, 1937.



1. The right to be stationed at railway and highway frontier crossings, and to move about as the Administrators directed in the neighborhood of the frontier (Paragraph 4).

2. The opportunity of collaborating with local officials (Paragraph 4).

3. The right to enter railway establishments and similar premises to make such inspections as were considered necessary to determine whether forbidden goods or individuals were seeking entry into Spain (Paragraph 5).

4. The right to demand necessary documents or passports (Paragraph 5).

5. The right to communicate with their co-officers, superiors, or headquarters in London, and to enjoy diplomatic immunities (Paragraph 5).

The international Observing Officers designated to board vessels of the participating states and go with them to Spanish waters to watch their actions there were to be accorded similar rights and privileges, *mutatis mutandis*. They were to:

1. Be given preferential accommodations and board on the vessels to which they were assigned (Paragraphs 15, 16, 17).

2. Be accorded by the master, officers, and crew of the vessel all of the necessary facilities for the essential observation, examination, and gathering of information (Paragraph 10).

3. Interrogate passengers in the presence of an officer of the ship to ascertain their purpose of travel and whether there was any intention of violating the Non-Intervention Agreement; to examine their passports, together with the identity papers of the members of the crew (Paragraph 10).

4. Be present at the unloading of the cargo and the debarkation of passengers, and to do anything necessary to satisfy themselves whether violations were occurring (Paragraph 10).

5. Report to their Observation Ports, and be given preferential treatment in the use of the ship's communication facilities (Paragraph 10).

6. Check the list of passengers and crew after the vessel left Spanish waters (Paragraph 10).

7. Be granted diplomatic immunity outside of Spain and the privilege of dealing with national officials of the participating states (Paragraph 10).

It is to be noted that the plan did not make provision for the securing of diplomatic privileges for the ship Observing Officers within Spanish jurisdiction, inasmuch as Spain was not a party to the agree-

ment and scheme. And it will also be observed that the officers were given no authority to debark from their vessels while in Spanish jurisdiction. An interesting question arises whether Spanish authorities might go aboard these foreign vessels while in their jurisdiction and take off the Observing Officers or confine them to closed quarters aboard the ship while unloading. So far as is known, the Spanish authorities did not interfere with the Observing Officers in the discharge of their functions.

The international Naval Patrol features of the Observation Scheme resembled to a certain extent the North Sea Fisheries Patrol, although in the present instance the powers granted to the patrol vessels were not so far-reaching. The Naval Patrol vessels were authorized to:

1. Report to the Non-Intervention Committee through their Governments the names of all ships of participating states arriving at their patrol zones; of all ships arriving which had not stopped to pick up Ship Observing Officers; and the names of all ships refusing to stop for Naval Patrol "observation" upon command of the officer in charge (Paragraph 30).

2. Station themselves ten miles from the Spanish coast (Paragraph 32).

3. Fly a special pennant identical to that established by the North Sea Fisheries Convention while engaged in patrol duty (Paragraph 32).

4. Approach ships of the participating states to ascertain their identity (Paragraph 37a).

5. When necessary, stop, board, examine the registry certificate and clearance papers of any ship; ascertain whether Observing Officers were on board, or whether the vessel had stopped at an Observation Port before approaching Spanish waters (Paragraph 37a).

6. Require all vessels of participating states to converge upon "focal areas," if and when such should be established by international agreement (Paragraph 37c).

7. Not exercise the "right of search" but they might call the attention of the master of a vessel to his obligations under the Non-Intervention Agreement and the Scheme of Observation, particularly that his refusal to stop for observation or his falsely flying the special international pennant which a vessel with a Ship Observing Officer aboard was entitled to fly were violations of national law and entailed certain consequences, set forth in Paragraph 39 of the Scheme (Paragraph 38).

8. Be called upon and give evidence and testimony to the proper

officials of the state to which a vessel belongs which had violated the Agreement or the Scheme of Observation (Paragraph 39).

No diplomatic privileges or immunities, similar to those set forth for the ship Observing Officers, were provided for the Naval Patrol officers. While Paragraph 32 of the scheme indicates that the Naval Patrol vessels should station themselves ten miles from the Spanish coast, it may be added that it was specifically agreed by the Committee that the patrol vessels should exercise their functions shorewards to the three-mile limit, and that they would not exercise them further out than the ten-mile limit. They were not supposed to go inside the three-mile limit while on patrol duty, nor were they legally privileged to follow merchant ships into Spanish ports to observe their activities there. Under the terms of the scheme (Paragraphs 31, 37a, 54, 58), full control and direction of the activities of the Naval Patrol vessels were left exclusively in the hands of the states supplying the patrol vessels. The Committee in London did not officially receive information on the way in which the warships conducted themselves off Spain. It did not receive copies of the instructions sent to the vessels, nor details of where any given ships were patrolling within the zone assigned to them, nor the names of ships on or off duty at any given moment. All of this information went directly to the governments controlling them.

The Naval Patrols were not specifically authorized to stop vessels belonging to states other than those participating in the Observation and Control Scheme. However, it would seem correct to assume that a patrol vessel had a right at least to "approach" any ships coming within her zone for the purpose of ascertaining whether such vessels belonged to participating states or not, or whether they were entitled to fly the flag which they were at the moment flying. Delicate questions of international law were at issue here, closely resembling those raised a century ago when efforts were being made to stamp out the slave traffic. In view of the fact that the patrol vessels were not possessed of belligerent rights, they were not entitled to interfere with innocent ships of other nations, on the high seas, and it would seem entirely doubtful, in the absence of an international convention therefor, whether the patrol vessels could employ force to ascertain the true character of a suspected vessel if she flew the flag of a non-par-

ticipating state. The patrol vessels were given no power to interfere with vessels flying the Spanish flag.

#### OBLIGATIONS ASSUMED BY THE PARTICIPATING GOVERNMENTS

The sanctions behind the Observation Scheme were the good will, the coöperation, and particularly, the enforcement of specially enacted or applied national legislation or decrees by the states participating. According to the Observation Scheme, the participating states agreed to take the following important measures, to wit:

1. Receive Land Frontier Observers within their jurisdiction and accord them diplomatic privileges and immunities; the right of communicating with their officers and superiors within and without the country; the facilities necessary for conducting their investigations, observations, examinations and reporting (Paragraphs 4, 5).

2. Take the steps necessary to require vessels entitled to fly their flags to comply with the Ship Observation and Naval Patrol plans (Paragraph 6).

3. Instruct all ships entitled to fly their flags to call at Observation Ports before proceeding to Spain to embark Observing Officers and accord them all the necessary rights and privileges (Paragraph 10a).

4. Issue instructions to the masters and owners of these vessels to take all steps in their power to prevent the unloading of forbidden goods or volunteers in violation of the Non-Intervention Agreement (Paragraph 10d).

5. Take such legal and other proceedings against the owners and masters of these vessels as violated the Accords or the Observation Scheme, and communicate the same to the International Board (Paragraph 10f).

6. Try to reach a special agreement regarding the exemption from or reduction in harbor and other charges which would be assessed against vessels stopping at Observation Ports to embark or debark officers (Paragraph 21).

7. Take the measures necessary, and report the same to the Non-Intervention Committee, to prevent vessels from going directly from their territorial waters into Spanish territorial waters without submitting to the international observation (Paragraph 29).

8. Have their naval vessels execute the Naval Patrol plan in the zone assigned by the Scheme (Paragraphs 31, 58).

9. Impose severe penalties upon any of their vessels which abused the use of the international pennant (Paragraph 35).

10. Try to reach an international agreement on the establishment of "focal areas" off Spain to which all vessels must converge (Paragraph 36).

11. Give their naval officers sufficient and appropriate power to execute the task agreed upon (Paragraph 37a).

12. Take legal proceedings against any vessels entitled to fly their flag not respecting the Naval Patrol (Paragraph 39).

13. Submit a full report of the particulars of each ship charged with attempting to commit a breach of the Agreement, and report the legal or other penalties imposed (Paragraph 40).

14. Contribute to the International Fund (Paragraph 52).<sup>85</sup>

15. Pay the costs of their own Naval Patrol vessels (Paragraph 54).

The Observation Scheme was designed to provide the International Committee in London with more complete and accurate information on the shipment of forbidden goods and volunteers from the non-intervening states to Spain, and to establish certain sanctions for individual violations. There can be no denial of the ingenuity of the plan, although serious gaps and flaws appear in it.

#### NATIONAL MEASURES FOR THE FULFILLMENT OF THE OBLIGATIONS

Following the adoption of the Observation Scheme, legislative and other measures were adopted and applied by the several participating states.<sup>86</sup> In no one of these states was there a law already in existence on the first of March requiring national vessels to submit to the type of observation and control embraced within the terms of the Observation Scheme. With one exception, the measures which were adopted were drawn up especially with reference to the Observation Scheme, and were terminable at or before the end of the Spanish civil strife.<sup>87</sup> The laws of Norway alone were couched in general terms and ap-

<sup>85</sup> The United Kingdom, France, Germany, Italy and Russia agreed to contribute 16% each of the total Fund. The remaining 20% was to be borne by the other states in proportionate amounts. *London Times* March 18, 1937.

<sup>86</sup> The texts of these measures will be found in Appendix VII.

<sup>87</sup> Albania (date unknown).

Belgium, June 11, 22, 1937.

United Kingdom, Spanish Frontiers  
Observation Act, 1937; April 16,  
1937.

Denmark, April 16, 1937.

Estonia, March 19, 1937.

Finland, April 30, 1937.

France, April 8, 1937.

Germany, April 7, 1937.

Greece, March 16, 1937.

Irish Free State, March 11, 1937.

Italy, April 19, 1937.

Latvia, April 19, 1937.

Lithuania, March 25, 1937.

The Netherlands, March 4, 30, 1937.

Norway, March 19, April 16, 1937.

Poland, May 22, July 3, 1937.

Portugal, April 9, 1937.

Roumania (date unknown).

Sweden, April 16, 1937.

Turkey (date unknown).

U.S.S.R. (date unknown).

Yugoslavia (date unknown).

plicable in circumstances other than those relating only to the Non-Intervention system for Spain.<sup>88</sup>

Attention may first be devoted to the question of the vessels subject to the observation and control plan. According to Part III, Section 6 of the Observation Scheme, "*All ships* having the right to fly the flags of the countries which are parties to the Non-Intervention Agreement (*other than naval vessels*), proceeding to Spain . . . will embark . . . Observing Officers. . . . The Governments concerned taking such steps as are necessary to require the owners and masters of ships having the right to fly their flags to comply with the provisions. . . ." By virtue of this phraseology the intentions of the negotiators seem clear. The laws of fourteen of the states were worded in such a fashion that *all vessels* registered in or belonging therein were subordinated to the régime.<sup>89</sup> On the other hand, the laws of six of the states applied only to "merchant" or "commercial" vessels.<sup>90</sup> By the laws of Portugal and Turkey, public vessels and warships were definitely excluded from the necessity of taking on Observing Officers or stopping for the Naval Patrols. Considering the exemption from jurisdiction often claimed and accorded to publicly owned and operated vessels, it is possible that considerable quantities of men and materials may have been shipped into Spain by means of public non-merchant or non-commercial vessels, such as transports, supply ships, dispatch carriers, *et cetera*, flying naval ensigns rather than the customary mercantile flags. So long as the Naval Patrol system remained in operation all vessels, including those in the category just noted, were subject to approach by the naval vessels on international patrol duty for the purposes of verifying the identity (and in this case the *bona fide* public character of the vessels) of *any* ships having a right to fly the flags of any of the participating states, and of ascertaining whether the vessel called at an Observation Port for the embarkation of Observing Officers, if bound for a port in Spain. Subsequent to the termination of the Naval Patrol system in September, 1937, all vessels, including those classified as public non-merchant vessels, were subject to approach by naval vessels for the ascertainment of their nationality and character to the extent normally

<sup>88</sup> See the laws of March 19 and April 16, 1937.

<sup>89</sup> United Kingdom, Denmark, Finland, France, Greece, Italy, Latvia, Lithuania, The Netherlands, Norway, Portugal, Roumania, Sweden, Turkey.

<sup>90</sup> Albania, Belgium, Estonia, Germany, Irish Free State, Poland.

allowed in international practice. After the above-mentioned date, however, no right existed on the part of the commanders of any naval vessels approaching ships, of other than their own nationality, to board with a view to discovering whether Observing Officers had been embarked, to warn masters of vessels failing to embark such officers that they were committing an offense, or to notify the government of the state in which the said vessel was registered of the failure of any master to comply with the Observation Scheme or with the laws of his own country.

Adverting to the various acts regulated, required or prohibited by the measures adopted in connection with the Observation Scheme, it will be found that in ten states the loading of arms or the receiving on board of persons intending to go to Spain without possessing special permits therefor was expressly prohibited or unlawful without the procurement of an authorization from the government.<sup>91</sup> Denmark and Hungary provided that vessels planning to call at a Spanish port must undergo special inspection before clearing port. Sixteen states made the transportation of arms or volunteers unlawful.<sup>92</sup> Fifteen states made the unloading of such commodities or persons in Spanish territory a prohibited act, or required the masters of vessels to "take all measures to prevent" the unloading or debarking of such goods or persons.<sup>93</sup> The Netherlands forbade its vessels to touch at Spanish ports if war materials or volunteers were known to be on board.

A nice legal problem arises in connection with transshipment at sea. Supposing that a vessel registered in State X should meet, by arrangement or by circumstance, on the high seas in the North Sea, a vessel registered in State Y proceeding in ballast to Cape Town, South Africa, and should there transship to the latter vessel a large cargo of arms ultimately destined for Spain; that this vessel should then carry the cargo to a point on the high seas off the west coast of Morocco where it should meet, by arrangement or by circumstance, a vessel registered in State Z, and should there transship the cargo of

<sup>91</sup> Albania, Belgium, United Kingdom, Denmark, Estonia, Finland, Hungary, Irish Free State, The Netherlands, Yugoslavia.

<sup>92</sup> Belgium, United Kingdom, Denmark, Finland, France, Germany, Greece, Hungary, Irish Free State, Italy, Latvia, The Netherlands, Norway, Poland, Portugal, Sweden.

<sup>93</sup> Belgium, United Kingdom, Denmark, Estonia, France, Germany, Greece, Hungary, Irish Free State, Italy, Latvia, Lithuania, Norway, Poland, Turkey.

arms to the Z vessel; that the last vessel should then take the arms to a point on the high seas off the south coast of Spain where it should meet by arrangement a vessel registered in insurgent territory, and should there transship the cargo to the Spanish vessel to be run into the Spanish port. Would such a transaction be unlawful under the laws of States X, Y and Z, if they were participants in the Non-Intervention system?

The laws of five states are reasonably construable as covering and rendering unlawful such a transaction or any material part of it.<sup>94</sup> The embargo or shipping laws of thirteen of the states having maritime interests and participating in the system, contain stipulations regarding "transit" or "transshipment" in general terms.<sup>95</sup> An examination of the context in which such provisions appear would seem to convey the impression that the transit or transshipment mentioned referred to transit through the territory of the state, or transshipment in the state. It may be argued, however, and upon solid legal foundation, that a vessel upon the high seas is not only subject

<sup>94</sup> The Merchant Shipping (Carriage of Munitions to Spain) Act, 1936, of the United Kingdom states: "... no such article shall be transshipped on the high seas from any such ship into any vessel bound for any such port or place, and no such article consigned to or destined for any such port or place shall be taken on board or carried in any such ship." The Belgian Decree of June 22, 1937, provides: "It is forbidden to load in any manner on board Belgian commercial vessels or fishing vessels, or to embark thereon for a Spanish port as a destination, any material of war referred to . . ." Section 1 of the German law of April 7, 1937, reads: "The transportation of volunteers who wish to go to Spain . . . as well as the transportation of war materials destined for the above-mentioned territories is forbidden to ships of the German merchant marine." The Italian Decree of April 19, 1937, recites: "It is forbidden to all ships flying the Italian flag to carry persons enlisted to take service with the forces fighting at present in Spain . . . and likewise to carry arms and munitions destined to the above-mentioned fighting forces." Finally, the Latvian Decree of Feb. 23, 1937, provides: "It is forbidden to take on board a vessel passengers bound for Spain whose passports have not the special permission . . . for Spain."

<sup>95</sup> Albania, Decree of Sept. 12, 1936 ("transit to Spain"); Finland, Decree of Sept. 4, 1936 ("transshipment of all kinds of arms . . . to Spain, either direct or indirect,"); France, Notice of Sept. 8, 1936 ("transit and transshipment of arms . . . of every country for Spain"); Greece, Decree of Sept. 24, 1936 ("transit from Greek territory . . . destined for Spain"); Lithuania, covered by Tariff and Customs laws of Aug. 29, 1936; The Netherlands, Act of June 11, 1919, regulates transit of goods; Norway, Law of Nov. 27, 1936 ("Prohibit employment of Norwegian Vessels for the Transportation of Arms to Spain"); Poland, Order of Dec. 10, 1936 ("no protection . . . to merchant vessels . . . transporting to Spain"); Portugal, Decree of Aug. 27, 1936 ("transit to a destination in Spain"); Roumania, Decree of Sept. 2, 1936 ("all transit . . . of arms . . . for Spain"); Turkey, Decree of Sept. 1, 1936 ("transshipment from or through Turkey"); U.S.S.R., Decree of Aug. 28, 1936 ("transit to Spain"); Yugoslavia, laws require a permit for the transportation of arms.



to the laws of its own country, but is to be regarded as a portion of the national territory to which the laws apply. Hence, transshipment onto the decks of the vessel followed by later transshipment off the decks onto another vessel may be regarded as "transit" or "transshipment" within the purview of the law, even though the actions take place upon the high seas and be separated in point of time and space. While it is possible that some evasions of the Non-Intervention system may have taken place through such practices, it is believed that other kinds of circumventions played a more active part.

Turning to other features of the enforcement measures, it may be noted that nineteen states required masters of vessels to call at Observation Ports; <sup>96</sup> that all of these, save Finland, included in their measures a serialization of the ports at which Observing Officers were to be taken on board; that all set forth in detail the requirements regarding the facilities to be accorded to the Observing Officers; that all made provision for the return of the Officers to Observation Ports; and that all of them specified that vessels must stop for control by the Naval Patrols stationed off Spanish coasts.

Penalties for infractions of the Observation Scheme were included within the terms of the laws of sixteen of the maritime states.<sup>97</sup> No penalties seem to be referred to in the measures of three states, although they may be otherwise provided for in law.<sup>98</sup> Fines were in order according to thirteen measures; <sup>99</sup> imprisonment in eleven; <sup>100</sup> and miscellaneous penalties in four cases.<sup>101</sup>

On the basis of this summary it may be said that adequate provision was made by the European Powers so far as concerns the letter

<sup>96</sup> Belgium, United Kingdom, Denmark, Estonia, Finland, France, Germany, Greece, Irish Free State, Italy, Latvia, Lithuania, The Netherlands, Norway, Poland, Portugal, Roumania, Sweden, Turkey.

<sup>97</sup> Belgium, United Kingdom, Denmark, Estonia, Finland, France, Germany, Irish Free State, Italy, The Netherlands, Norway, Poland, Portugal, Roumania, Sweden. The Latvian law referred to other statutes for punishment.

<sup>98</sup> Albania, Lithuania and Turkey. Texts of measures for Yugoslavia and the U.S.S.R. have not been received, so nothing can be said regarding penalties in these states.

<sup>99</sup> United Kingdom, Denmark, Finland, France, Germany, Greece, Irish Free State, Italy, The Netherlands, Norway, Poland, Portugal, Sweden.

<sup>100</sup> Belgium (up to 6 months); Denmark (up to 3 months); Estonia (up to 3 years); France (up to 6 months); Germany (length unspecified); Greece (up to 6 months); Irish Free State (up to 2 years); The Netherlands (up to 1 year); Norway (up to 3 months); Poland (up to 2 years); Portugal (up to 3 years).

<sup>101</sup> Belgium, Greece, Latvia, Roumania.

of the law for the fulfillment of the matters embodied in the March 8 Scheme. If proof were needed that in some countries and in many phases of international relationships there is often a government of men rather than a government of laws, the business of "non-intervention" in Spain should supply this in abundance. Notwithstanding schemes voted in solemn international gatherings, and laws enacted in many countries, materials and troops continued to enter Spain in vast quantities throughout 1937 and 1938.

#### WEAKNESSES IN THE OBSERVATION SCHEME

By what means were evasions or circumventions of the Observation Scheme and the attendant laws accomplished? Doubtless by many, both direct and indirect. In some instances these may have involved positive action by a state; in other cases complicity or oversight by officials; in still other cases the action may have been taken so covertly as to be unknown at the time to officials and authorities.

Certain weak spots have been noted above, in connection with public vessels and transshipment at sea. One well-known method of evasion involved shipment to a designated real or fictitious consignee, or even to order, in a non-participating state, to be transshipped without the knowledge of the authorities of the first state either there or at some way stop, to a vessel flying the flag of a non-participating state (including Spain), and thence forwarded to Spain without the observation of the Non-Intervention Officers. This has been regarded by officials of the Non-Intervention Committee as one of the most frequent means of evasion. Shippers in participating states might circumvent the authorities by shipping the goods on a vessel flying the flag of a non-participant destined for a lawful foreign port, and, with the connivance of the master and the local Spanish authorities, secure the diversion of the ship into Spanish waters, there to be unloaded without formal entry or clearance from a port. Spanish registered and flagged vessels were not subject to the Observation Scheme or to the prohibitions placed upon the vessels of participating states. With a certain amount of connivance on the part of interested parties a given vessel might be supplied with the registry and flags of a foreign state and of Spain. Goods might be laden aboard the vessel consigned and destined to a non-Spanish port, or to the Canary Islands which were exempt from the Scheme. Upon reaching the high seas,

and before approaching Spain, the Spanish flag of the proper party might be run up and Spanish registry papers placed in the customary location of ships' papers. The vessel might then run into Spain without stopping at an Observation Port to pick up an Observing Officer. It may be observed in this latter connection that nothing in the various laws appears to have forbidden shipowners selling or chartering their vessels to Spanish parties or to parties in non-participating states.<sup>102</sup>

A basic weakness in the Observation and Control plan was the lack of provision against states withdrawing from any or all parts of it at will. It would have been better had the scheme embodied an engagement binding the states to uphold it for a definite time, or for the duration of the strife. However, it must not be forgotten that while the Scheme was unanimously voted for in the Non-Intervention Committee in London and fortified by the adoption of national measures, the London Committee had no *de jure* existence and the resolution adopting the Scheme no *de jure* force as an international engagement. The international accord was built upon an accord of policy from which any Power was at liberty to depart at any time for reasons of national policy.

#### TERMINATION OF THE NAVAL PATROL

There is no lawful basis for saying that Germany and Italy violated an international undertaking, much less international law, when they "withdrew" from the Naval Patrol on June 23, 1937. Although Germany and Italy withdrew from the Naval Patrol in June, 1937, and the British and French terminated their participation in it in September when the international "anti-piracy" patrol was initiated,<sup>103</sup> it may be authoritatively stated that the ship observation scheme continued for the duration of the strife; that German and Italian merchant vessels were still required to pick up observers and that they loyally continued to do so; that German and Italian Observing Officers working under the scheme continued with their duties. While figures cannot be quoted, it may be said that the Non-Intervention Committee possesses information showing that by and large the mer-

<sup>102</sup> Mr. Eden admitted that considerable evasion occurred through this means. London *Times*, July 20, 1937.

<sup>103</sup> London *Times*, Sept. 18, 1937.

chant shipping of the participating states coöperated unexpectedly well with the efforts of the Non-Intervention officials.

June 12, 1937, following the aerial bombing of the German warship *Deutschland* off Spain by a Valencia airplane, Britain, France, and Italy made a special agreement with Germany to the effect that if any Naval Patrol vessels should be attacked thereafter, they would consult together on the measures to be taken. At the same time, they dispatched notes to the parties in Spain requesting assurances of the safety of the patrol vessels.<sup>104</sup> Prior to the receipt of the replies,<sup>105</sup> it was reported in the press that on June 15 and 18, the German cruiser *Leipzig* was attacked by torpedoes off Spain.<sup>106</sup> An appeal was immediately made by Germany to the other Powers in the Four-Power Agreement to concert upon a naval demonstration off Valencia and the dispatch of strong remonstrances. Some doubt being entertained as to the truth of the allegations put forward by Germany respecting the attack upon the cruiser, Britain and France demurred, suggesting an international investigation of the facts before the adoption of

<sup>104</sup> London *Times*, June 14, 1937. Following the German bombardment of Almeria subsequent to the Spanish attack upon the cruiser *Deutschland*, the Valencia Government sent a formal protest to the Non-Intervention Committee, demanding guarantees of safety for itself. The note read:

"1. The Spanish Government place on record their protest against barbarous aggression as shown by the bombardment of Almeria.

"2. That this attack on their sovereignty as an independent country and insult to the honour of Spain has been committed in consequence of the control scheme.

"3. That, therefore, the Spanish Government not only protest but also reserve all rights as regards damages and prejudices of all kinds—most serious materially and incalculable morally—caused by part of a fleet to which the Non-Intervention Committee entrusted the control of engagements undertaken by countries which had subscribed to the Non-Intervention Agreement, a pact which Italy and Germany violate systematically.

"4. That the Republican Government demand from the signatories of the Non-Intervention Agreement guarantees that the exercise of the Republican Government's indisputable right to carry out acts of war within the seas and ports in the territory of the Republic will not entail similar incidents.

"The Republican Government can see no objection to submitting to competent international bodies examination of the exactitude of the fact that aggression was begun by the *Deutschland*." London *Times*, June 5, 1937.

<sup>105</sup> It was reported that the rebels were prepared to give the necessary assurances for the safety of the naval vessels. London *Times*, June 24, 1937. The loyalists, on the other hand, found it impossible to "proceed to the examination of the proposition . . . inasmuch as they are not accompanied by other propositions destined to guarantee the security of the merchant ships, the ports and cities of the Spanish coasts against the attacks, more or less overt, of which they have been the object on different occasions on the part of German and Italian ships of war, by propositions destined also to prevent these foreign ships from continuing their collaboration with the naval units in the control of the rebels." The full text of the reply will be found in Appendix VIII-1.

<sup>106</sup> London *Times*, June 19, 1937.

coercive measures.<sup>107</sup> This being disdained by the German Government and treated as an insult by her official press, the German and Italian Governments formally withdrew from the Naval Patrol on June 23.<sup>108</sup> When the British and French representatives proposed to the Committee on June 29 that the "gaps" be filled by British and French patrol vessels with neutral observers aboard to insure impartial procedure, the Berlin-Rome representatives refused to assent to such a plan.<sup>109</sup>

<sup>107</sup> *Ibid.*, June 21-23, 1937.

<sup>108</sup> *Ibid.*, June 24, 1937. The German note read: "The German Government, after being notified of the attacks on the cruiser *Leipzig* on June 15 and 18, have immediately informed the Powers engaged in the Spanish sea control that they are not willing to expose their naval forces, while entrusted with an international task, to further target practice off Red Spain.

"The German Government have limited to a minimum the guarantee which had to be asked for the safety of the German ships in requesting a naval demonstration of the four control Powers in order thus to express a definite and obvious solidary warning.

"Since the British and French Governments are not ready to agree even to this minimum request, the German Government regret to state that among the control Powers that spirit of solidarity which is an indispensable condition for the execution of the common international task is lacking. The German Government have therefore decided to withdraw finally from the Control Scheme." The Italian note was based on the same idea.

<sup>109</sup> *Ibid.*, June 20. While the Powers were wrangling over the collective naval action which should be taken, they were able, nevertheless, to agree upon an appeal to the Spaniards for the humanization of the war. The presentation of such notes through the instrumentality of the Non-Intervention Committee marked somewhat of a departure from its normal activities. The appeal which was dispatched to both sides read:

"Deeply impressed by the sufferings inflicted upon the people of Spain by the tragic events which have marked the present conflict and actuated by the desire to bring relief to the families and homes of the Spanish people, the International Committee for the Application of the Agreement regarding Non-Intervention in Spain, on behalf of the Governments [the names of the 27 Governments follow] which are parties to the Non-Intervention Agreement, appeal to the two parties in Spain at once to take every step necessary for the protection of non-combatants, whether men, women or children, from the dangers to which they are subject and to put a stop to the summary or mass executions of individuals for political reasons.

"The International Committee urge that hostages and prisoners of war held by either party should be treated in accordance with humanitarian principles, that for the future the system of hostages should be abandoned, and that all non-Spanish nationals held as prisoners who have taken no part in the present conflict should be released. These principles should be applied equally to the civilian adherents of the opposite side in the territory under the control of the respective parties.

"Lastly, the International Committee urge that both sides should abstain from the destruction of all open towns and villages and other objectives of a non-military character, whether by bombardment from the air, or by land or sea, or by fire, mining, or any other means.

"The International Committee for Non-Intervention in Spain earnestly hope that the present appeal, which they believe corresponds with the ideals and the honourable traditions which have ever animated the Spanish people in the course of its history, will evoke a response from the two parties and will help to lessen the cruel sufferings inflicted upon the civil population during the present conflict." London *Times*, June 19, 1937.

THE QUESTION OF RECOGNITION OF BELLIGERENCY AND THE  
WITHDRAWAL OF VOLUNTEERS

At the subcommittee meeting on July 2, the German and Italian representatives put forward counter-proposals involving: (1) the granting of belligerent rights to both parties in Spain, (2) the termination of the Naval Patrol, letting the Spaniards exercise an "effective form of control" not only over the vessels of the non-intervening Powers, but also over those of Spanish and non-European nationality, (3) the full retention of the land and ship observation schemes as previously existing.<sup>110</sup> It was argued by the German Government that recognition "would have the immediate effect of strengthening the policy of non-intervention, as in fact all the European Powers would add to their obligations as signatories of the Non-Intervention Agreement the duties incumbent upon neutral states according to the principles of international law adapted to the peculiar situation in Spain," and "because (a) legitimate shipping would go on with Observing Officers on board, (b) the illegitimate shipping which had carried out all arms smuggling without the International Committee being able to stop it would be put to an end by the Spanish parties themselves."

Definite opposition was interposed to these measures and arguments by Britain and France on the same ground as formerly maintained by Germany and Italy *vis à vis* the earlier suggestions—partiality and favoritism.

THE BRITISH PLAN OF JULY 15, 1937

With affairs at this impasse, it was finally decided by the Committee on July 9 to request the British Government to take the diverse projects into hand and to try to bring forward a new proposal which might be acceptable to all.<sup>111</sup> This was accepted and the new plan was published on July 15.<sup>112</sup>

Under the new scheme, the ship observation and land frontier supervision features of the earlier scheme were retained. In place of the Naval Patrol plan, however, it was proposed to substitute (1)

<sup>110</sup> *Ibid.*, July 3, 1937.

<sup>111</sup> *London Times*, July 10.

<sup>112</sup> *British Parliamentary Paper*, Spain No. 2 (1937), Cmd. 5521. Printed *infra* as Appendix VIII-2. A project for withdrawal of volunteers was first considered by the Committee on May 24.

international patrol officers in Spanish ports, and (2) recognition of belligerency, subject to qualifications. Both propositions involved the assent of the two parties in Spain. The placing of patrol officers in Spanish ports was suggested by the Committee in December, 1936, and definitely rejected by both sides at that time.<sup>113</sup> The German-Italian desire to have the belligerency of the Spaniards recognized was incorporated in the British project, but subject to important qualifications. The belligerents were to be asked to agree as part of the price of recognition to treat as contraband of war only such commodities as were included in the Hemming schedules, or as might be agreed to by the Non-Intervention Committee. This novel proposition bears out the observation made above on page 68 that international accord on the articles embraced in such lists might lead to attempts to impose them upon belligerents. Paragraph (b) of the new plan was ambiguous. The Spaniards were not to molest foreign vessels carrying observers and flying the observer flag, except when the vessel was "engaged in unneutral service (such as the carriage of troops or the transmission of intelligence) or breach of blockade which has been duly notified and is effectively maintained." It is not clear how the Spaniards were to ascertain whether a foreign vessel was engaged in unneutral service or attempting to break a blockade, unless the vessel was approached and visited. Yet the first part of the condition was sweeping—"allow the unmolested passage." Furthermore, vessels engaged in carrying troops were forbidden to go to Spain, and would not have observers aboard. Restriction (c) required that "*no steps* shall be taken by either party to impede or interfere with the passage of neutral shipping not engaged in traffic with Spain" but passing close to it. It is difficult to comprehend how the Spaniards were to know whether a foreign ship not flying the non-intervention flag but passing along the coast of Spain was in innocent passage to another country or whether the vessel was surreptitiously seeking to import contraband into Spain unless the vessel could be visited and examined. And yet the plan allowed the Spaniards no such normal right. Paragraph (d) allowed the recognizing states to protect national vessels against the exercise of belligerent rights if the Spaniards attempted to: (1) search for contraband not on the agreed list; (2) molest vessels carrying observers even though there

<sup>113</sup> See page 77 and footnote <sup>76</sup> above.

was proof that such vessels had contraband aboard; (3) interfere with suspicious looking vessels passing along the coast whose masters might truly or falsely advise that they were en route to another country.<sup>114</sup>

These conditions involved unusual legal propositions and were hardly supportable upon precedent or principle. They imposed preposterous limitations upon the exercise of normal belligerent rights, and conveyed the implication that if they were not observed, recognition would be withdrawn, an idea which has been universally held to be impossible. It is not surprising that they were not acceptable to the Spaniards.

A more rational part of the plan was that relating to the extension of the Accord to include making it unlawful for vessels entitled to fly the flags of the participating states to carry the prohibited goods from *any* port to Spain,<sup>115</sup> calculated to fortify the sanctions contained in Paragraphs 6, 10a, 10d, 10f, and 40 of the scheme of March 8, which were to continue in effect.

In an attempt to stem the tide of goods reaching Spain *via* vessels registered in states not participating in the Non-Intervention Accord, the plan embodied, in Paragraph 5 of Section B, an invitation to all foreign states to agree to the recognition of belligerency and to accede to the system of maritime observation and control. With the rejection of the plan by the Spaniards, and with the disagreement of the European states *inter se* regarding the next steps to be taken, the invitation fell upon barren ground and resulted in no additional adherences.

The proposals for the withdrawal of foreign volunteers from Spain involved: (1) the adoption of a Committee resolution in favor of the withdrawal; (2) the appointment, acceptance by the Spanish contestants, and the dispatch of two commissions to supervise in Spain the withdrawal and evacuation of volunteers; (3) the adoption and enforcement in each of the collaborating states of such "practical

<sup>114</sup> Early in May the Non-Intervention Committee had taken under advisement the questions of what collective or individual action should be taken if a non-Spanish merchant vessel with an Observing Officer on board were interfered with by Spanish war craft. Apparently no accord was reached other than that each Power was free to take such steps as it saw fit to oppose interference with its merchant vessels, and that a protest should be made through the Committee for every case of interference where an Observing Officer was on board. *L'Europe Nouvelle*, Oct. 9, 1937, Suppl., pp. i-ii.

<sup>115</sup> Based upon the British Merchant Shipping (Carriage of Munitions to Spain) Act, Dec. 3, 1936. See Appendix II, *infra*.



measures as may be found necessary for effecting these withdrawals"; and, (4) international agreement upon a time-table concerning (a) the establishment of Observing Officers in Spanish ports, (b) the establishment of the two Commissions, and (c) united recognition of belligerency when the Non-Intervention Committee recorded "their opinion that the arrangements for the withdrawal of foreign nationals are working satisfactorily and that this withdrawal has in fact made substantial progress."

A Technical Sub-Committee of the Non-Intervention Committee issued on the same date as the publication of the British Plan a Report on the Persons to be Withdrawn which provided a useful classification of foreign personnel subject to withdrawal.<sup>116</sup>

### PROTRACTED NEGOTIATIONS

Notwithstanding a warning by Mr. Eden to the effect that "Our proposals constitute a carefully balanced whole," and that the plan "stands or falls as a whole,"<sup>117</sup> disagreement arose at once over the project. The leading points in contention concerned whether belligerent rights should be granted, whether all or part only of the volunteers were to be withdrawn, whether any or all volunteers must be

<sup>116</sup> "All persons in Spain, the Spanish Possessions, or the Spanish Zone of Morocco are liable to be evacuated who, on July 18, 1936, either were nationals of, or—being stateless persons—were domiciled in, any Country the Government of which is a party to the Non-Intervention Agreement, and who are unable to prove that they entered the service of either party in Spain before that date, if they fall within any of the following categories:

"(1) Combatant personnel of whatever rank attached to, serving in, or serving with the naval, military, or air forces of either party in Spain.

"(2) Personnel engaged in the maintenance of essential services in connection with the armed forces of either party, *e.g.*, lines of communication, ground services in aerodromes, supply, ordnance, etc. (N.B.—Exempted are personnel serving in recognized non-Spanish medical, sanitary, or similar units.)

"(3) Personnel engaged as instructors or advisers with the armed forces of either party.

"(4) Personnel engaged in civilian capacity with the armed forces of either party, *e.g.*, lines of communication, naval shore establishments, etc.

"(5) Personnel engaged with either party in, or as advisers to, government departments or other administrative offices, *e.g.*, railways, ports, docks, etc.

"(6) Personnel engaged in any capacity in the work of manufacture, assembly, or repair of war material (including aircraft) covered by the Non-Intervention Agreement.

"(7) Personnel engaged in the arms trade with either party.

"(8) Persons whose activities are in any way susceptible of prolonging or embittering the present conflict. (As to be defined by the special sub-committee.)

"(9) Prisoners of war held by either party." *London Times*, July 15, 1937.

<sup>117</sup> *London Times*, July 20, 1937.

withdrawn before belligerent rights were conceded. The German and Italian Governments desired recognition of belligerency to precede the withdrawal of volunteers, while the Russian Government objected to a grant of belligerent rights under any conditions. Failing to make progress, the Sub-Committee charged with forwarding the adoption and application of the British Plan adjourned *sine die* on August 6.<sup>118</sup>

The startling rise of unwarned submarine attacks upon foreign vessels in the Mediterranean during August and September of 1937, followed by the diversion of the British and French naval vessels into the "anti-piracy patrol" instituted by the terms of the Nyon Arrangement, resulted in the final demise in the middle of September of the Naval Patrol system set up by the Observation and Control Scheme of March 8.<sup>119</sup> While the relations between the five Great Powers were strained as a result of the submarine campaign and the refusal of Germany and Italy to take part in the Conference at Nyon, the door to further negotiation on the Non-Intervention system was again pushed ajar by conversations which were held between the representatives of Britain, France, and Italy at Geneva on the 22d of September, following Italian adherence to the Nyon Arrangement.<sup>120</sup> Proper indications having been received from the Italian Government, a joint note was presented to the latter by the British and French Governments on October 2, proposing tripartite conversations concerning the withdrawal of volunteers from Spain and the cessation of the Spanish strife as means toward general European appeasement.<sup>121</sup> Although welcoming the idea of a general *détente*, and expressing readiness "to examine . . . all means which may be thought suitable to render effective the policy of non-intervention," the Anglo-French suggestion was rejected on the grounds that the matters in question were equally the concern of other states which would not be represented in such conversation, and in particular that Italy would not negotiate in the absence of Germany. Alternatively, it was proposed that the Non-Intervention Committee be reconvened and the problems examined anew therein.<sup>122</sup> The

<sup>118</sup> Text of communiqué in *L'Europe Nouvelle*, Oct. 30, 1937. Suppl., p. viii.

<sup>119</sup> *London Times*, Sept. 18, 1937.

<sup>120</sup> *L'Europe Nouvelle*, Nov. 13, 1937, Suppl., p. v.

<sup>121</sup> Appendix VIII-3; *British Parliamentary Paper*, Spain No. 3 (1937), Cmd. 5570.

<sup>122</sup> Appendix VIII-4; *British Parliamentary Paper*, Spain No. 3 (1937), Cmd. 5570.

other governments being agreed, the Sub-Committee met on October 16.

At the opening meeting of the Sub-Committee the French representative took the initiative and presented a five-point program for early consideration, the terms of which were as follows:

1. The withdrawal of foreigners serving in Spain and whose evacuation is recommended by the report which is already before the Committee shall be realized within as brief a delay as possible.

2. As soon as the international commissions charged with organizing and controlling this withdrawal have satisfied themselves that its execution is sufficiently advanced, the two parties in the Spanish conflict will be authorized to exercise—conforming to the provisions of the British Plan—certain of the rights which international practice recognizes as belonging to belligerents to exercise.

3. In order and to better manifest the definitive character of the agreement arrived at upon the above-mentioned principles, the Governments represented on the Committee shall agree to employ all their influence, whether at Valencia or at Salamanca, to secure that within a brief period a certain number of volunteers shall be withdrawn from the armies, account being taken of the disproportion between the number of effectives serving on either side.

4. The Governments represented on the Committee undertake anew in the most strict manner not to authorize, or to facilitate, and *a fortiore* not to provoke from now on any new departure of volunteers or any dispatch of aerial materials.

5. A system of reinforced control, based upon the suggestions contained in the Van Dulm-Hemming Report, will be put into force as soon as any necessary adjustment shall have been made, the examination of which shall be immediately undertaken.<sup>123</sup>

The French suggestions were immediately seconded by Lord Plymouth, as expected, and favorable responses were given by the Italian and German representatives. The Italian delegate read a formal declaration on the part of his government in which it was said:

1. We are prepared to declare once more that we are favorable to the withdrawal of volunteers.

2. We accept the report of the Technical Sub-Committee, the nomination of a Commission to Spain. We agree to collaborate in all measures which shall be accepted by the two parties in Spain. We accept, naturally, point 7 (of the British Plan) if the other Powers accept the points relative to control and to belligerent rights, that is to say, points 1, 2, 3, 4, 5, 6.<sup>124</sup>

<sup>123</sup> *L'Europe Nouvelle*, Nov. 13, 1937, Suppl., p. vii.

<sup>124</sup> *Ibid.*, pp. vii-viii.

Although the representative of the Soviet Union adopted a cynical and provocative position he did not entirely block the procedure and the committee was enabled therefore to begin again the slow and arduous task of attempting to bridge the gap in the policies of the various Powers.

A contribution to progress was made by the Spanish Loyalist Government in a note to the British Government of October 11, expressing willingness to have all volunteers withdrawn, and to that end accepting "in principle the intervention of organizations of an international character."<sup>125</sup>

After considerable negotiation, lasting over several Sub-Committee sessions, a draft resolution was agreed to by all of the governments with the exception—and abstention from voting—of the Soviet Union,<sup>126</sup> on November 4, the latter formally acceding on November 16.<sup>127</sup> This Resolution recorded the acceptance, *in principle*, of the British Plan of July 14, including the time-table there proposed concerning the relative time of effecting withdrawals and granting belligerent rights, expressed a decision to examine the reinstitution of the frontier and maritime control scheme along the lines suggested in a confidential report prepared by Admiral Van Dulm and Mr. Hemming, and authorized the Chairman of the Committee to approach immediately the two parties in Spain with a view to obtaining their agreement to the Resolution, including the plan of sending an international Commission to each part of Spain to count the foreigners, arrange for their withdrawal and to supervise the ultimate evacuation.

Although the correspondent of the *New York Times* remarked that "a microscope would be needed to find a trace of genuine progress among so many high-sounding words,"<sup>128</sup> it must be said on the other hand that such action as was taken was explicitly called for in Paragraph 7a of the July 14 Plan.

The insurgent authorities were the first to reply to the communication from the Chairman of the Non-Intervention Committee in their

<sup>125</sup> *London Times*, Oct. 12, 1937.

<sup>126</sup> Text in Appendix VIII-5. The dramatic and welcome offer on the part of the Italian and German representatives at the meeting on Oct. 20 played an influential part in the negotiation. *London Times*, Oct. 21, 1937. See also *ibid.*, Oct. 23, 27, 29, 1937.

<sup>127</sup> *New York Times*, Nov. 17, 1937.

<sup>128</sup> *Ibid.*, Nov. 3, 1937.

note dated November 18.<sup>129</sup> While the text of this note does not seem to have been published, it appears that the insurgents accepted the resolution in principle, including the appointment, dispatch and operation of the withdrawal Commissions. At the same time, the right to approve or disapprove the composition of the Commission was reserved. It was insisted that the withdrawal be in equal numbers from each side, and the inaugural number of 3000 was suggested. Objection was raised to the provisions regarding recognition of belligerency, it being maintained that the insurgents were entitled to recognition as a matter of "right." Reestablishment of the frontier control system was apparently accepted, although questions were raised concerning the maritime scheme.

The reply of the Spanish Loyalist Government followed somewhat the same general lines, indicating acceptance of the proposition to withdraw foreign combatants from Spain and to allow the intervention of international Commissions to supervise the operation.<sup>130</sup> Acceptance was linked, however, with a demand for clarification of certain points, including the composition and precise functions of the Commissions. A conflict between the British Plan of July 14 and the recommendations of the Van Dulm-Hemming Report of August 20—both of which apparently formed the basis of the November accord—concerning the stationing of international Observing Officers in Spanish ports in lieu of the system of naval patrols was pointed out, and a decision demanded as to which of these two propositions was actually to be utilized. The Government also insisted upon prior knowledge of what the Committee contemplated as the "additional measures" to be taken to render more effective the system of observation and control. Question was raised as to whether the withdrawals were to be in proportion to total numbers of foreigners present, or on the basis of categories of service. Objection was made to the non-inclusion of Moors as foreign combatants. Query was made as to the order of reestablishing frontier control and the appointment of the Commissions, and finally, as to whether adhesion to the "accord as a whole" involved acceptance of the provisions regarding belligerent rights.

<sup>129</sup> *Ibid.*, Nov. 24; *London Times*, Nov. 26, 1937. Further details of the note may be pieced out from the text of the Note of Aug. 21, 1938, which appears in Appendix VIII-9, *infra*.

<sup>130</sup> Text reproduced, Appendix VIII-6, *infra*.

## ADOPTION OF NEW PLAN, JULY 5, 1938

Although the Sub-Committee at its meeting on December 7, 1937, decided after examining the replies of the two parties in Spain that there was sufficient acceptance of the November Resolution to warrant moving forward, another six months elapsed before any further major progress was recorded. During this interval controversy raged over the details of putting the withdrawal into motion and over meeting the demands raised in the notes of the two parties in Spain. In particular, the disputed issues involved how many foreigners were embraced within the term "substantial withdrawal," whether the operation should be based upon gross numbers or upon proportions within defined categories of service, in how many and in what Spanish ports observers should be stationed, whether the naval sea control should or should not be reinaugurated, when the frontier control should be reimposed, and how and by whom the cost of counting, withdrawing, encamping and evacuating the foreigners should be borne. Responsibility for the protracted delays was divided, but in general it may be said the greatest opposition to active progress emanated from Russia, whose representative took the position that the Soviet Union would not "take part in the strangulation of the Republican Government," and would not contribute to the cost of evacuating Fascist troops. Compromise was finally effected and on June 21, 1938, the Sub-Committee unanimously approved a new British Plan, which in turn had to be submitted to all of the participating governments and to the two parties in Spain for approval.<sup>131</sup> Assent was given readily by the former, and the project was unanimously voted at the plenary meeting of the Non-Intervention Committee on July 5.<sup>132</sup>

## ANALYSIS OF THE PLAN

As clearly indicated by the title of the new resolution, more was involved than the mere voting upon further details regarding withdrawal. The occasion was seized upon to incorporate in the new accord a solemn reaffirmation of "the obligations entered into" by the agreements of August and September, 1936, regarding the embargo upon the exportation of arms and war materials, and by the Accord of February, 1937, for the prohibition of the departure of volunteers for

<sup>131</sup> *New York Times*, June 22, 1938.

<sup>132</sup> The full text is in Appendix VIII-7, *infra*.

Spain.<sup>133</sup> Included therein was a categorical serialization of the 15 groups of war materials which the states had commonly agreed to embargo as of March 8, 1937,<sup>134</sup> and which were to become the contraband lists of the Spanish contestants in the event of the grant of belligerent rights.<sup>135</sup>

Question may well be raised regarding the reference to "the obligations entered into." While the resolution was formally voted upon in the Non-Intervention Committee, and approved outside of the Committee by the various constituent governments, the resolution can hardly be regarded as a legal obligation, inasmuch as the Committee was neither originally nor at any subsequent time authorized to create contractual international engagements for the states. Distinction is to be drawn between the approval of such a resolution and the signature of a treaty or convention. The representatives were not given full powers for the conclusion of a convention, and no signatures were attached to the resolution. Under the circumstances it must be maintained that the 1936 and 1937 "obligations" of which the resolution speaks continued to be merely moral and political accords, and that no new obligation under international law was created.

Part 2 of the 1938 Plan added to the February, 1937, Accord an agreement to prohibit the departure or transit for Spain of: (1) all classes of persons to be evacuated from Spain (Paragraph 6a); (2) persons intending to engage in propaganda activities or occupations inconsistent with the "intention and spirit of the Non-Intervention Agreement" (Paragraph 6b ii); (3) persons seeking to take the place of any one evacuated from Spain under the terms of the Plan (Paragraph 6c); (4) persons previously evacuated from Spain (Paragraph 6d); (5) persons who have previously violated an undertaking not to engage in interventionist acts (Paragraph 6e). This extension to cover individuals whose actions "would be in any way susceptible of prolonging or embittering" the conflict may well be regarded as a desirable one, and necessary for the perfect functioning of the purpose behind the Plan.

Part 3 of the 1938 Plan, providing for the agreement to prohibit the carriage from any port to a Spanish port by ships of the participating countries of war materials included in the embargoed list, was

<sup>133</sup> Annex, Part 1.

<sup>135</sup> Annex, Part 5, Paragraph 101.

<sup>134</sup> See above, page 80.

a continuation, under slightly different phraseology, of Paragraph 4 of the 1937 Plan.

Part 4 of the new Plan was a detailed elaboration of the basic principles concerning the withdrawal of foreigners laid down in Paragraph 7 of the 1937 Plan. Broadly speaking, the lengthy provisions may be grouped into five categories: (1) acceptance of the scheme as a whole by the two parties in Spain and agreement to coöperate in its fulfillment; (2) the creation of machinery for counting, evacuating, transporting and verifying the withdrawal of volunteers, together with provisions respecting the functioning of each of these tasks; (3) a classification of the foreign personnel to be withdrawn; (4) undertakings by the participating governments for the adoption of the necessary supportive and executory measures; (5) a time-table of procedure.

The potential key to the successful operation or failure of the Plan lay in the series of steps to which the authorities in both parts of Spain were asked to agree. These embraced:

1. Acceptance of the principle of withdrawal of all foreigners aiding or supporting the conflict (Part 4 as a whole; Paragraphs 48 and 65 in particular).

2. Acceptance of a body of International Commissioners, Branch Establishments, and Evacuation Areas to arrange for, supervise and facilitate the withdrawal and evacuation (Paragraphs 9, 12, 13, 14, 32).

3. Appointment of liaison officers to act with the Commissions (Paragraph 27).

4. Agreement to coöperate in the estimating and counting of the foreigners present (Paragraphs 15, 25, 33).

5. Agreement to hand over daily to the Evacuation Area Commandants the specified number of foreigners (Paragraphs 15, 17).

6. Agreement to extradite at the proper time foreigners serving prison terms (Paragraph 33).

7. Agreement to deport foreigners refusing to be evacuated (Paragraph 47).

8. Accordance of diplomatic rights and privileges to the international officers sent to Spain by the Non-Intervention Board, freedom of communications, and the right to establish necessary depots and acquire essential facilities (Paragraphs 68, 69).

For putting the Plan into operation extensive provision was made for the necessary machinery and for the order of procedure. The In-



ternational Board, created by the Observation and Control Scheme of March, 1937, was given general supervision and authority (Paragraphs 9-11). Subordinate to this Board were to be: (1) two Commissions of three persons each, one to be sent to each side in Spain to take the census, make the arrangements for evacuation and supervise the same (Paragraph 12); (2) several Branch Establishment Commissions to operate in the outlying Spanish possessions (Paragraph 13); (3) Commandants and large technical staffs for four Evacuation Areas, two in each of Spain, into which the foreigners were to be placed while awaiting embarkation (Paragraphs 14, 24); (4) a Joint Commission composed of members of each Commission plus the Secretary of the International Board to determine the exact number to be handed over to the Evacuation Areas each day (Paragraph 34); and (5) a group of Sea Escort Officers to be placed on board the transports to oversee the embarkation, transportation and landing of the volunteers in their own states (Paragraphs 46, 74). For the proper and just functioning of the withdrawal an ingenious scheme of estimating and counting the numbers of foreigners on each side and then of determining the exact proportionate numbers to be withdrawn and embarked daily was worked out in Sections II and III of Part 4 of the Plan. Inasmuch as this was not carried through in practice analysis of the procedure need not be made here.

The section of the Plan detailing the foreign personnel subject to withdrawal was primarily based upon the Report of the Technical Sub-Committee accompanying the 1937 British Plan. The 1938 provisions considerably strengthened the earlier ones and eliminated several loopholes. No exemption from withdrawal was to be accorded because the foreigner had obtained Spanish nationality while in Spain. The burden of proof was thrown upon the volunteer to prove that he was not aiding or supporting the strife when doubt arose as to status. Personnel engaged in propaganda activities was added to the list of those "engaged either directly or indirectly" and liable to withdrawal. New provisions were inserted to cover the cases of political exiles, stateless persons, and fugitives from justice (Paragraphs 50, 60). In the first two instances evacuation was to be either to the country of habitual residence immediately preceding the individuals' passage to Spain, or to any state willing to permit entry. In the case of fugitives from justice, evacuation was to be to the state of residence

immediately preceding passage to Spain, leaving to the latter the matter of extradition to any demanding state.

Next in importance after obtaining the adherence of the Spanish authorities was the series of undertakings placed upon the participating foreign governments. These included:

1. Agreement to admit volunteers of its own nationality liable to evacuation or deportation from Spain (Paragraphs 63, 78).
2. The giving of publicity to the project of withdrawal (Paragraph 64a).
3. Informing all nationals in Spain of the withdrawal through the medium of the consular and diplomatic services (Paragraph 64b).
4. Agreement to take all measures necessary to render coöperation effective for a complete withdrawal from Spain (Paragraphs 68-70).
5. The taking of any requisite steps to prevent legal disability being placed upon those who had served in Spain (Paragraph 66d).<sup>136</sup>
6. Sharing of the expenses of counting, supervising and evacuating of volunteers (Paragraph 71).
7. Agreement by each state to bear the cost of sea transportation of all of its nationals from Spain.
8. The preparation and sending of a roll of the names of all persons arriving from Spain to the International Board (Paragraph 76).

Part 5 of the 1938 Plan dealt with the question of recognition of belligerency. This was basically the same as that incorporated in the earlier Plan. Subject to the limitations to be imposed upon the Spaniards regarding contraband and the molestation of vessels in the employ of the Non-Intervention Board or flying the Observing Officers' pennant, it was made clearer that the rules to be observed by the belligerents "are the recognized rules of international law on the subject." Improvements over the former plan included mention of aircraft, which were to operate according to the international rules "or the principles which underlie them" (Paragraph 100); provision for notification to the Spanish authorities of the vessels approaching Spain under the employment of the International Board and subject to non-interference (Paragraph 104); serialization of acts constituting unneutral service and exposing foreign vessels to the loss of the

<sup>136</sup> Question may well be raised whether this involved the dropping of all proceedings for the violation of laws and orders prohibiting enlistment or departure of volunteers for Spain.

right of unmolested passage (Paragraph 107); <sup>137</sup> authorization to warships of the Non-Intervention Powers to enter blockaded ports "for the purpose of maintaining contact with the diplomatic and consular representatives" (Paragraph 109); and a clarification of the respective rights and positions of the belligerents and non-Spanish vessels en route to non-Spanish ports but passing near the Spanish coasts along customary sea routes (Paragraph 110). In the latter connection, the Spanish parties were to be called upon to give prior agreement not to interfere with such vessels, except to verify their nationality and destination, and when there were reasonable grounds for believing that the foreign vessels had no ground for exemption. Furthermore, stipulations were included regarding belligerent operations which, if adopted, should have remedied the losses occasioned to foreign shipping through the sowing of mines and the attacks by aircraft, noted in Chapter Two. Paragraph 110 provided:

. . . this undertaking is to be interpreted as precluding, not only direct interference, for example by the use of warships or aircraft, but also indirect interference, such as mine laying in such positions that, even though the operation were carried out in a manner consistent with the relevant rules of international law, interference or danger would be involved to ships on any of the routes normally followed by ships not engaged in traffic with Spain, or the Spanish Dependencies or the Spanish Zone in Morocco.

Part 6 of the Plan represented a reaffirmation of parts of the March, 1937, Observation and Control Scheme, plus the introduction of a considerable number of innovations based upon the suggestions contained in the Van Dulm-Hemming Report. As these proposals fundamentally altered the system which was described at some length above and which operated in whole or in part for over a year and a half, it may be desirable to summarize and digest them at this point. In substance the new provisions were designed to afford the International Board more exact information on what was taking place in Spanish ports; give it more authority for investigating alleged violations and for dealing with the participating states; and place an additional

<sup>137</sup> Unneutral service was stated to include: (1) taking a direct part in hostilities; (2) transporting troops; (3) carrying or transmitting military intelligence; (4) being chartered by the Spanish authorities or navigating under the effective control of an agent of one of the parties.

burden of responsibility upon the states for the effective operation of the system.

The revised scheme readopted the proposal of requesting permission of the Spanish authorities to station Observing Officers in Spanish ports in lieu of the naval control off the coasts of Spain, notwithstanding previous Spanish objections.<sup>138</sup> Observing Officers were to be "permanently stationed" in eight of the largest Spanish ports, provision was to be made for the "constant presence" of such officers in "all Spanish ports engaged in foreign trade, where technical facilities for the unloading of war material exist" (Paragraph 116), and Observing Officers arriving in any Spanish port on board a vessel of one of the participating states were to be entitled to go ashore after the unloading of the vessels to which they were assigned to ascertain whether any foreign vessels were present without Observing Officers, and if so, to observe and report on the unloading of such vessels (Paragraph 154). Where more than one Observing Officer was aboard a vessel arriving in a Spanish port the International Board was to be empowered to detach one of the officers to remain in the port at the discretion and under the orders of the Board to observe all foreign vessels arriving and unloading at the port (Paragraph 155). In order to strengthen the authority of the Observing Officers, the Spanish parties agreed "to impose upon the Masters of all ships entering all such ports the duty of affording to Observing Officers disembarked in the manner prescribed in the paragraph referred to above all facilities necessary for the discharge by them of the duties with which they are charged" (Paragraph 156), and the participating states were also called upon to require by law that the masters of vessels entitled to fly their flags should admit Observing Officers to their vessels while in Spanish ports and give them all necessary facilities for performing their functions and making their reports (Paragraph 163).

In order to supplement these measures further new provisions were inserted requiring Observing Officers to note the names and particulars of all vessels seen in Spanish ports, requiring them to submit definite reports stating whether or not offenses were committed and setting forth full details (Paragraph 131). In addition, the participating states were called upon to compile and forward to the Board weekly reports of every steamship of a participating state or of

<sup>138</sup> See above, pp. 77 and 103.

Spanish registry entering or clearing their ports with information regarding their destination (Paragraph 152). They were also required for the first time to make legal provision for compelling vessels having the right to fly their flags "ostensibly bound for non-Spanish ports where the Board considered that there are good grounds for believing that a breach of the Non-Intervention Agreement may be in contemplation" to take on board an Observing Officer or to deviate to an Observation Port for this purpose (Paragraph 139). Finally, the coöperating states were asked to take steps "to exercise an effective supervision over the transfer of ships to their respective flags with a view to preventing such transfer being effected as a means of evading the provisions of the Observation Plan and of the Non-Intervention Agreement," and to notify the International Board of all transfers, including particulars regarding the owners (Paragraph 153).

Supplemented in the ways indicated, the Observation Scheme should have functioned more effectively, although not all of the loopholes already noted <sup>139</sup> were, or perhaps could be, closed. No longer would it have been entirely possible, however, for vessels of the participating states to unload completely unobserved in Spanish ports as a result of failing to call at an Observation Port to pick up an Observing Officer, either when directly en route to Spain or when contriving to evade such a call by departing for a supposed non-Spanish destination. On the other hand, no more control was provided than formerly over violations taking place either by: (1) shipping the forbidden commodities to a non-participating state for transshipment there to a vessel flying the flag of some non-participating state and being carried thence into Spain; (2) shipment directly to Spain in vessels of non-participating states; (3) the shipment of the goods or volunteers to the Canary Islands whence they might be carried to Spain proper in Spanish or non-participating state-flagged vessels; (4) transshipping the goods or volunteers at sea (*i.e.*, outside of a port) from vessels ostensibly or actually destined to a non-Spanish port, and hence without Observing Officers on board, to Spanish or non-participating state-flagged vessels or lighters for carriage into port. While adequate safeguards appear to have been set up regarding transfers of registry to states participating in the Non-Intervention system as a means of evading observation and control, it seems

<sup>139</sup> See above, page 92.

odd that no provisions whatsoever were introduced regarding transfers of registry *from* these states to non-participating states. The participating states might equally well have been requested to obtain and forward to the International Board information regarding transfers from their flag, for certainly there can be little question but that evasion could be more easily secured through shipment upon vessels flying the flags of non-European countries.

No rules have at any time been established under the Non-Intervention system regarding the activities and movements of state-owned and operated vessels. Bearing in mind the decisions and views taken by courts in many countries that such vessels are immune from jurisdiction, it might well follow that in the absence of express provisions concerning such vessels in the Observation and Control Schemes these were to be regarded as exempt from observation. It is possible that such a situation may have been in mind in the framing of Paragraph 153, although the terms of this were not straightforward enough to indicate that thereafter state-owned and operated vessels were to become subject to the observation system.

It seems unfortunate that the naval patrol feature was entirely dropped. While the governments agreed to forward weekly reports on the entry and clearance of vessels from their own ports, and the Observing Officers were required to report the names and particulars of all vessels seen in Spanish ports, the naval patrols assured a third basis of information, at the same time adding an element of authority behind the observation machinery.

The final part of the Plan contained a time-table of procedure, which followed the general lines set forth in the Plan of July, 1937. As the application of the succeeding stages depended entirely upon the acceptance of the elaborate scheme by the authorities at Barcelona and Salamanca, attention may best be devoted first to the replies emanating therefrom.

#### SPANISH ATTITUDES

The note of the Spanish Government, dated August 22, 1938, must be classified as neither a satisfactory acceptance nor a complete rejection of the program drawn up by the Non-Intervention Committee.<sup>140</sup> It signified acceptance in principle of the objective of withdrawal of

<sup>140</sup> The text of the reply will be found in Appendix VIII-8, *infra*.

foreign volunteers, but hedged this about with "observations" and demands. It demanded that the Commissions be empowered to investigate themselves the veracity of the figures and estimates given to them by the Spanish authorities. It insisted upon placing all "specialists" (aviators, artillerymen and other technicians, civil or military general staff officers) in one classification, instead of dividing all foreigners into the four divisions contained in the Plan. A strong desire to have the Moors evacuated, and an astonishment that materials of war were not to be withdrawn were expressed, while questions were asked regarding the detailed operation of the Evacuation Areas. Disposition to accord the necessary agreement and facilities for Observing Officers in ports was conveyed, although "the greatest reservations" were entered, and it was added that it did "not doubt . . . the Committee . . . will submit to a revision a proposition" so unequal as to leave uncontrolled other great ports in rebel territory. Objection was raised to the limited character of the sea control, as well as to the failure to make provision for aerial observation, and to the entire proposition of granting belligerent rights to the rebels.

While accepting in principle the idea of withdrawal of foreigners, the reply to the insurgent authorities went even further in condemning the Plan and refusing to accept it.<sup>141</sup> Acceptance was conditioned upon "proper guarantees" of revision, of the non-return to Spain of those evacuated, and of a prior grant of belligerent rights. Setting forth in a logical manner the facts customarily warranting recognition of belligerency as being fulfilled, it was stated that "it cannot . . . agree to the grant of belligerent rights in the form proposed. . . . It demands, as a condition and precedent, that this right, which is the consecration of an undoubted fact, should be granted in all its fullness and not subject to conditions, since there is no question of a favor capable of discussion, but of a well-founded right." The details of the withdrawal plan were rejected on the grounds that it contained no surety of just and proper fulfillment, that it excluded nationals of states other than those in the Non-Intervention Accord, and that it would produce "unequal results." The scheme of Observing Officers in ports was said to "usurp in a humiliating manner the sovereign rights of Spain and would give rise to the same dangers

<sup>141</sup> The text of the note will be found in Appendix VIII-9, *infra*.

as those specified in the case of the supervision officers supervising the evacuation of volunteers," and could be remedied only by the exercise of belligerent rights by the Spanish authorities. Finally, the note ended expressing the view that it was useless to mention other details until these were satisfactorily ironed out.

Faced with such replies, the problem of getting the foreigners out of Spain seemed to be but little nearer realization than in July of 1937. To have revised the Plan to meet the objections of both parties in Spain would have required months of further labor and controversy and have offered no greater certainty of success in the end.

#### LOYALIST APPEAL TO THE LEAGUE OF NATIONS, SEPTEMBER, 1938

The contribution which finally broke the impasse came from the Loyalist Government on September 21, 1938, when Premier Negrín, speaking before the Assembly of the League of Nations, announced the decision of his government to effect the withdrawal of foreign combatants from its side and requested the appointment by the League of Nations of an international commission to go to Spain to oversee the withdrawal and to "satisfy the League of Nations, and, through it, the public opinion of the world, that that withdrawal is carried out absolutely and completely."<sup>142</sup> Speaking to the proposition before the Sixth Committee, Señor del Vayo said that moral considerations prevented his government allowing the Non-Intervention Committee to take charge of the withdrawal and that it was only natural for it to appeal to the League where it was represented.<sup>143</sup>

Some opposition to the proposal being encountered in the Committee,<sup>144</sup> the recommendation adopted for reference to the Assembly was restricted to the following, which was adopted by the Assembly without a record vote: "The Assembly expresses the wish that the Council should include in its agenda the proposal submitted to the Assembly on September 21, 1938, by the Spanish delegation and examine it in the light of the discussion which has taken place in the Sixth Committee."<sup>145</sup> At its session on October 1, the Council

<sup>142</sup> League of Nations, *Journal of the 19th Session of the Assembly*, Sept. 22, 1938, pp. 140-141. The text of the draft Resolution will be found in Appendix XI-15, *infra*.

<sup>143</sup> *Journal, op. cit.*, Sept. 27, p. 233.

<sup>144</sup> Expressed by the representatives of the Irish Free State, Hungary, Portugal and Albania. *Ibid.*, Sept. 30, p. 274.

<sup>145</sup> *Ibid.*, Sept. 30, p. 274. Full text will be found in Appendix XI-15, *infra*.



adopted a Resolution authorizing the appointment of a Commission to go to Spain to note the measures adopted and to report on the effectiveness and completeness of the withdrawal.<sup>146</sup>

Coincidental with the action of the Council in Geneva, a note was sent by the British Government to General Franco inquiring whether he would be willing to receive officially the Secretary of the Non-Intervention Committee to discuss the question of withdrawal.<sup>147</sup> A favorable reply being received, Mr. Hemming set out for Spain at once and was received with "great cordiality" by the Foreign Minister of the Franco régime at Burgos on October 11.<sup>148</sup> So successfully and rapidly did the conversations proceed, that Mr. Hemming was able to set up headquarters for a technical staff of Non-Intervention Committee officials the following day, who began at once to canvass and classify the documents regarding the numbers and the withdrawal of foreign volunteers from the insurgent side under the general tenor of the Committee's plan of procedure.<sup>149</sup>

Meantime, the League of Nations' Commission was appointed, consisting of General Jalander of Finland, Lieutenant-Colonel Homo of France, and Colonel Molesworth of Great Britain, together with a staff of 19, and assembled on the Spanish border, October 14, from which it proceeded at once to Barcelona.<sup>150</sup>

#### THE WITHDRAWAL OF FOREIGN FORCES

Thus, after months of negotiation in the London Committee had proved more or less fruitless, the interesting spectacle of both sides in Spain apparently rushing within the period of less than a month to be first to admit an international supervision commission and to evacuate large bodies of troops occurred and completely altered the picture. The first to leave Spain were a contingent of 10,000 Italians embarked at Cadiz on October 15. While it cannot be stated conclusively that what occurred between September 21 and October 15 stemmed from any one source and represented the working-out of a new and carefully prearranged confidential scheme, it would seem demonstrable that there was careful diplomatic preparation involving many parties, and greater international accord than had prevailed

<sup>146</sup> Text in Appendix XI-16, *infra*.

<sup>147</sup> *Le Temps*, Oct. 1, 1938.

<sup>148</sup> *New York Times*, Oct. 12, 1938.

<sup>149</sup> *Ibid.*, Oct. 13, 1938.

<sup>150</sup> *Ibid.*, Oct. 13, 1938.

over the Spanish situation for some time. Certainly this turn of events was not unrelated to the developments in the wider field of European affairs, particularly concerning the Great Powers.

The evacuation of foreigners serving with the Republican forces proceeded slowly and in measured fashion under the guidance of the League Commission.<sup>151</sup> At the meeting of the Council of the League of Nations on January 16, 1939, the Commission reported that when it had reached Spain it was able to account for 12,673 non-Spanish combatants in the areas under government control. It reported that all of these effectives had been withdrawn from combatant units, that 4,640 belonging to twenty-nine nationalities had been evacuated from Spain by the time the report was prepared, and that large numbers of others were due to leave in the immediate future.<sup>152</sup> From information contained in press reports during the critical fighting in Catalonia in January, 1939, it appeared that foreign volunteer units were in fact no longer aiding the government forces. Indeed, the evacuation of the foreigners was accelerated in order not to retard the northward flight of the army and of the hordes of refugees preceding it. Although statistics as to the exact numbers varied widely, some thousands of Italian armed forces remained in Spain after the evacuation

<sup>151</sup> Three hundred and twenty-seven Americans left Spain on December 2, one hundred and eighteen former Netherland subjects reached the frontier of The Netherlands on the 5th, and three hundred British and Irish volunteers reached London on December 7. *New York Times*, Dec. 3, 8, 1938. Other groups were evacuated as rapidly as nationality certificates, passports, and other formalities could be arranged.

<sup>152</sup> The Provisional Report of the International Military Commission is contained in League of Nations, *Document C.34.M.18.1939.IX*. The report was presented and discussed at the second meeting of the One Hundred and Fourth session of the Council, Jan. 16, 1939. See *Document C./104th Session/ P.V. 2 (I)*, pp. 8-14.

In the conclusion of its Report, the International Military Commission stated: "The Commission's investigations show that the withdrawal of the non-Spanish combatants has actually been carried out in accordance with the conditions laid down in the plan of withdrawal, and so far as the Commission's findings indicate that there are no more foreign combatants in the Spanish army units at the date of reporting. After its investigations in the various services in the war zone and in the interior, and also in places controlled by the civil authorities, the Commission is able to state not merely that the Spanish army no longer contains any units of the international type, but also that all foreign volunteers have actually been withdrawn from the front for regrouping in the concentration centres assigned to them by the Government. The Commission's conviction that the withdrawal is effective is based not only on actual observations, details of which will be given in the final report, but also on the favorable opinion it has formed of the sincerity of the Spanish Government in the action which it has carried out under the Commission's eyes, as it were, in fulfilment of the undertakings given to the Assembly at Geneva. . . . The Commission has further satisfied itself that the measures taken at the frontiers by the Government to prevent evacuated volunteers from returning or new ones from enlisting are effective." Report, *op. cit.*, pp. 15, 19.

of the foreigners from the government side,<sup>153</sup> and were not withdrawn from Spain until after General Franco made a formal request for their return to Italy.<sup>154</sup>

#### THE END OF THE NON-INTERVENTION SYSTEM

The Non-Intervention system gradually atrophied as the Spanish strife took its wearisome course toward its ultimate *dénouement*. No meeting of the Non-Intervention Committee took place after July 5, 1938, and the chairman's sub-committee (the steering group) did not meet after July 6, 1938. For months previously the land frontier observation system had been in a state of completely suspended animation. November 21, 1938, Secretary Hemming reported to the Powers his failure to secure the acceptance of the Withdrawal Plan by General Franco, but no meeting of the Committee was convened to consider the situation or to devise new schemes.<sup>155</sup> The first formal break in the regime occurred on November 29 when, simultaneously, the Belgian Government withdrew from membership in the Non-Intervention Committee and from all activities connected with the system, Sweden resigned from the chairman's sub-committee, and, more significantly, Admiral M. H. van Dulm of The Netherlands, chairman of the International Non-Intervention Board and supervisor of the ship observation scheme, resigned his post.<sup>156</sup> Notwithstanding the implications of such developments, no meeting of the Non-Intervention Committee was summoned, and no action was taken to appoint a successor to Admiral van Dulm. With the capitulation of Tarragona and Barcelona, the flight of the Spanish Government from Spanish territory, and the establishment of an effective blockade off Valencia, virtually all of the traffic which had been furnishing occupation for the ship Observing Officers ceased altogether.<sup>157</sup> The observation staff was disbanded March 22, 1939.

<sup>153</sup> An Associated Press dispatch from Paris appearing in the *New York Times*, Feb. 18, 1939, stated that the Spanish News Agency, speaking for the Republican Government, said that the number of Italians was "between 80,000 and 100,000," while the Spanish Information Service, representing the Nationalists, said the number was "exactly 16,425." Reports from Rome put the number at 30,000.

<sup>154</sup> *New York Times*, March 2, 1939.

<sup>155</sup> *London Times*, Nov. 22, 1938.

<sup>156</sup> *New York Times*, Nov. 30, 1938.

<sup>157</sup> See illuminating dispatches by George Alexsson in the *New York Times*, Feb. 5, 28, 1939. In the latter dispatch it is stated on the basis of considerable investigation that some 242 foreign vessels were employed in the traffic of war supplies to government ports. Most of these vessels were under British, Greek and Panaman registry, and almost exclusively manned by Greeks and Arabs.

Quietly, informally and expeditiously, in ways peculiarly familiar to certain European civil services, the Non-Intervention system was brought to a close, and its copious but little used records filed in those impressive repositories where after the passage of appropriate decades of time and the accumulation of that awe-inspiring film of archival dust future generations of historians and international lawyers may cautiously be permitted to discover that doubtless there was some foreign intervention in Spain during the years 1936-1939.

#### SUMMARY

In summary, the Non-Intervention system included: (1) a collective admission of insurgency and acknowledgment of the fact that hostilities were in progress; (2) collective determination of the question of granting belligerent rights; (3) a collective embargo upon the exportation of war materials, and a collective ban on the departure of volunteers and troops for both sides in Spain; (4) an international organization (the London Committee and its officials) for the coördination and supervision of non-intervention; (5) an Observation and Control Scheme for the gathering of information on the extent to which the embargoes and bans were being enforced, involving: (a) supervision by international officers of all land frontiers adjoining Spain; (b) supervision by international officers of merchant vessels of participating states bound for Spain and the unloading of goods or passengers in Spanish ports; (c) an international Naval Patrol to investigate whether the merchant vessels of states participating in the accords carried international Observing Officers if they were bound for Spanish ports; (d) an International Board to administer the Scheme and to receive reports of violations; (e) an agreement among the states that they would bring to judgment in their countries any nationals found or reported to have violated the accords and the Observation and Control Scheme, and communicate the disposition of every such case to the International Non-Intervention Committee in London; (6) collective appeals to both Spanish parties to safeguard foreign lives and property, and protests when they were made the special objects of attack; (7) collective protests against inhumane methods of conducting hostilities and appeals for the humanization of the war; (8) the stationing of a corps of international officers in Spain to draw up ways and means of evacuating foreign volunteers and

troops; (9) collective proposals of mediation and termination of hostilities.

What may be said in conclusion of this unique and laborious institution? Was it, as Mr. Lloyd George charged, "The greatest and basest fraud and deception ever perpetrated by great nations upon a weak people?" Or was it a significant experiment?

There can be no denial that the Non-Intervention system constituted a departure from what has been thought to be "normal practice" in time of insurgency, in the sense that the established government should have been allowed to purchase supplies for the suppression of the illegal revolt, that belligerent rights should have been accorded when the conflict reached the magnitude and nature of public war waged by two organized régimes, that foreign states should have kept their hands off while the disturbance took its natural course. A glance backward over the major civil wars and insurrections of the past century and a quarter will reveal that in actuality there has been far less of this so-called normal practice than has been commonly supposed. To be sure, in the greater number of the innumerable disturbances which have occurred in the Americas, foreign states have adopted such a pattern of action. In the armed uprisings within European states, a different policy frequently has been followed. In disturbances in Spain, Portugal, Italy, Greece, the Ottoman Empire, and Russia, foreign states often intervened by armed force to determine the outcome of the struggle. European civil wars were connected with the international struggle for predominant power on the continent, making it difficult for any great Power to stand aside while another or another combination of Powers obtained control or possession of a state torn by civil strife, thus upsetting the balance of power.

The situation prevailing in Spain in 1936 was conducive to foreign intervention. Following the election in February, 1936, the Government of Spain became steadily more radical, syndicalism and labor violence became widespread, bolshevist and anarchistic doctrines were widely proclaimed, and close ties developed between the radical groups in Spain and the Communist International in Moscow. Against such doctrines and the expansion of such movements, certain European governments were committed. When, therefore, the disaffected and displaced army officers who planned the revolt, raised the slogan

of fascism, what could be more natural than that they should receive encouragement and support from those states desiring to break the power of communism and to advance the rule of fascism? The Popular Front Government in France, composed of left-wing elements, naturally regarded the cause of the Popular Front in Spain with deep sympathy, and the component elements of the party in power in France immediately demanded support for their political kin in Spain when the cry of fascism was raised. Thus the elements for intervention on both sides of the struggle in Spain were present from the outset.

No one would claim that the Non-Intervention system had eliminated or stopped foreign intervention in Spain, or that violations had been committed for the benefit of only one side. No one would deny that from all appearances the Powers composing the London Committee were more interested in spending almost endless periods of time in discussing technicalities and elaborate projects of observation than they were in actually stopping the intervention or penalizing those engaged in intervention. Furthermore, it cannot be gainsaid that in practice the accords operated in such a way as to weaken the established government and to confer advantages upon the insurgents. The most that may be said for the system is that it probably reduced the total amount of intervention which would have taken place without it, and that it perhaps was instrumental in preventing the civil strife from becoming international war. Considering the postulates of international law regarding the independence of states and the obligation of non-intervention, it is difficult to find objection, at least in principle, to an international accord formally recognizing these rules and designed to pledge the European states not to intervene in the internal affairs of one of their number. Certainly it seems desirable that in a society of states where the balance of power is regarded as being of such vital importance collective action for the localization of warfare, for the admission of insurgency and the recognition of belligerency, for the control of improper interference with foreign rights upon the high seas, and for the preservation of international peace, should be regarded as advantageous moves toward a commonwealth of nations in which law and order will regularly prevail.

## CHAPTER IV

### THE LEAGUE OF NATIONS AND THE CIVIL STRIFE

#### THE COVENANT AND CIVIL STRIFE

NO MENTION is made of civil disturbances in the Covenant of the League of Nations. Nevertheless, many of the provisions are comprehensive enough in purpose and in phraseology to warrant bringing the international complications of civil warfare within the jurisdiction of the League. Articles 3 and 4 permit it to "deal . . . with any matter . . . affecting the peace of the world." Article 10 pledges the members to "respect and preserve as against external aggression the territorial integrity and existing political independence" of states, and empowers the Council "in case of any such aggression or in case of any threat or danger of such aggression" to advise the means by which the obligation shall be fulfilled. Article 11 speaks of "any war or threat of war," and "any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations." Articles 12 and 15 refer to "any dispute likely to lead to a rupture."<sup>1</sup>

<sup>1</sup> The inclusiveness of the League's war-preventive jurisdiction was recognized by the Committee on Arbitration and Security of the Preparatory Commission of the Disarmament Conference, which said in its Report: "The League must in the first place endeavour to prevent war, and that in all cases of armed conflict or *threat of armed conflict of any kind* the League should take action to prevent hostilities or to bring hostilities to a standstill if they have already begun." (*Document A.20.1928.IX*, p. 54). In the memorandum submitted by the *Rapporteur*, M. Rutgers, it was said: "Under Article 11, the League of Nations has the most extensive competence. The Council can intervene in any conflict, whether the parties are members of the League or not. . . . Its authority is exercised in any war—not only in a war contrary to articles 12, 13, and 15, but also in a war which is not contrary to those articles. Even if there is no threat of war, but merely circumstances affecting international relations which threaten to disturb international peace or the good understanding between nations, the case may be brought to the Council's attention." (*Document C.A.S.10.1928.IX.3*, p. 28.) No mention was made of civil wars in any of the Committee's discussions. See *Minutes*, C.667.M.225.1927.IX; C.165.M.50.1928.IX; C.358.M.112.1928.IX. On the other hand, the competence of the League might be considerably restricted by the language of paragraphs 8 and 9 of Article 15: "If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement."

## ACTION IN PREVIOUS CASES OF DOMESTIC STRIFE

Under one or another of these articles, phases of the Russian revolution,<sup>2</sup> the terroristic practices of the Internal Macedonian Revolutionary Organization,<sup>3</sup> and the terrorist activities conducted across the Hungarian-Yugoslav frontier,<sup>4</sup> have been dealt with by the League of Nations. The organization has also acted upon civil disturbances in Southwest Africa,<sup>5</sup> Syria,<sup>6</sup> and Palestine,<sup>7</sup> under its supervisory powers over mandated territories. While many of the resolutions adopted by the Council and Assembly were couched in broad generalities, the League actually exercised a very considerable influence in alleviating grievances, promoting pacification, and improving local conditions connected with the disturbances referred to its consideration.

During the Spanish civil strife the League was resorted to on a number of occasions, either to act as a circulating medium or to concentrate public opinion on certain problems connected with the war. At no time was it asked to put an end to the hostilities, or to intervene directly in Spain to alter the natural course of events. Rather it was besought to condemn foreign intervention, to lend its weight to the Non-Intervention system, to produce a settlement of outstanding issues between Spain and other Powers, such as that regarding asylum, to pronounce against unlawful and inhumane methods of warfare, and to observe certain activities. All of these tasks it was able to discharge with a reasonable degree of success, as may be seen in the ensuing

<sup>2</sup> *Procès-Verbale* of 3d Session, p. 11 and Annex 21; *ibid.*, 5th Session, pp. 29, 119; *ibid.*, 6th Session, pp. 3, 7, 9, 17, 41.

<sup>3</sup> *Official Journal*, 1912, pp. 764, 803, 1110, 1133, 1500; *ibid.*, 1923, p. 724; League of Nations, *Treaty Series*, Vol. CI, p. 217.

<sup>4</sup> *Official Journal*, Dec. 1934, p. 1712 *et seq.*; *ibid.*, pp. 1759-1760; *ibid.*, Feb. 1935, Annex 1533; *ibid.*, June 1935, pp. 650-651; *ibid.*, Feb. 1936, pp. 119-120; League of Nations *Document A.7.1936.V*; *Official Journal*, Spec. Suppl. No. 153 (1936), p. 12; *ibid.*, Spec. Suppl., No. 156 (1936), p. 28 *et seq.*

<sup>5</sup> *Records of the Third Assembly Plenary Meetings*, Minutes, pp. 18, 31: "Report on the Bondelzwarts Rebellion," Permanent Mandates Commission, Annexes to the Minutes of the Third Session, A.19 (Annexes) 1923.VI, Annex 8b, pp. 290-296. See also Annexes 8 and 8a; League of Nations *Document A.48.1923.VI*; *Official Journal*, Spec. Suppl. No. 11, Oct. 1923, p. 28; *ibid.*, Feb. 1924, pp. 339-341.

<sup>6</sup> "Report of the Work of the 8th Session of the Mandates Commission," *Official Journal*, April 1926, Annex 860; *Official Journal*, April 1926, pp. 522-526; *ibid.*, April 1927, p. 418.

<sup>7</sup> "Report of the Work of the Mandates Commission during its Fifteenth Session," *Official Journal*, Nov. 1929, Annex 1166; *Official Journal*, Nov. 1929, pp. 1469-1472; *ibid.*, Feb. 1930, p. 93.



pages. More than anything else, the remarks and the maneuvers of the various states in the League meetings revealed the deep-seated differences between the Powers and the extent to which the Spanish affair cut into their attitudes and policies.

#### FIRST CONSIDERATION BY THE ASSEMBLY, SEPTEMBER, 1936

The problems of the Spanish insurrection were laid upon the doorstep of the League of Nations for the first time by the delegate of Spain, speaking before the Assembly, September 25, 1936.<sup>8</sup> They were not brought upon the basis of an appeal under any article of the Covenant, but rather as general remarks occasioned by the annual discussion on the work of the League during the preceding year. The burden of the remarks of Señor del Vayo was to the effect that the struggle in Spain had already become an international war; that a system of collective security should protect states against rebellions supported from the outside; that the Non-Intervention Accord amounted to intervention against the established government.<sup>9</sup> No resolution was passed by the Assembly, and mention was made of the Spanish affair by only four other delegates. Messieurs Delbos of France,<sup>10</sup> Litvinoff of Russia,<sup>11</sup> and Monteiro of Portugal<sup>12</sup> all defended the Non-Intervention Accord as essential to the preservation of European peace, while the Mexican delegate attacked it on the grounds of violating customary international law and removing from legal to political settlement questions heretofore regarded as of a legal nature.<sup>13</sup> For the most part there appeared to be a studied evasion of the Spanish crisis in this meeting of the League, and preference that it be dealt with by the Committee sitting in London. Nevertheless, warnings were expressed by some lest the League postpone too long situations which would inevitably be thrust before it. As Dr. Koht of Norway wisely remarked:

<sup>8</sup> *Ibid.*, Spec. Suppl. No. 155 (1936), p. 47.

<sup>9</sup> *Ibid.*, pp. 48-50. Reference was made in Señor del Vayo's address to a Note circulated to the members of the League by the Spanish Government objecting to the Non-Intervention system, Sept. 15, 1936. The Note was entitled, "La no-intervención en los asuntos de España. Documentos publicados por el gobierno de la República Española." It was not given a League document number. Printed in Appendix II, *infra*.

<sup>10</sup> *Ibid.*, pp. 51-52.

<sup>11</sup> *Ibid.*, p. 64.

<sup>12</sup> *Ibid.*, pp. 83-84.

<sup>13</sup> *Ibid.*, p. 101.

. . . the failures it [the League] has met with have occurred when it endeavored to intervene in conflicts that had already reached an acute stage. On the other hand, its successes have been won when it has been in a position to bring its influence to bear in time to prevent conflicts, and to conciliate the opposing nations before they resorted to the final arbitrament of arms.

It would, therefore, seem reasonable that we should endeavor rather to follow the path that has led to success rather than that which has led to failure. By boldly pursuing a policy which has been successful in the past, the League will tend increasingly to put an end to the interventionist inclinations of various Powers, for these interventions have often proved unfortunate.<sup>14</sup>

SPANISH APPEAL AGAINST FOREIGN ARMED INTERVENTION,  
NOVEMBER, 1936

In November, 1936, the Spanish Government appealed under Article 11 for an extraordinary session of the Council to consider the armed intervention of Germany and Italy in Spain and their recognition of the insurgent government, which were charged as flagrant violations of international law and as facts threatening to disturb peace and the good understanding between states.<sup>15</sup> Although an effort was made by certain Council members to avoid the convocation of an extraordinary session of the Council,<sup>16</sup> such a meeting was held on December 10, with Ecuador and Italy absent.

In a strong address at the opening of the hearing upon the Spanish appeal, Señor del Vayo charged that an international war raged on Spanish soil; that a new form of aggression was taking place whereby a foreign state provoked rebellion and then assisted the rebels with military aid in violation of treaties and undertakings. He dismissed the idea that the appeal was designed to provide aid or interference for the internal settlement of the Spanish strife, and emphasized that it was the desire of the Spanish Government to aid the League of Nations and Europe to clarify the domestic and international phases of the war, to forestall the enlargement of the arena of conflict, and to fill the gaps in the Non-Intervention system.<sup>17</sup>

Lord Cranborne, representing Great Britain, admitted that the Non-Intervention Accord was not being scrupulously observed, and that such violations constituted a threat to international peace within

<sup>14</sup> *Official Journal*, Spec. Suppl. No. 155 (1936), pp. 52-53.

<sup>15</sup> *Ibid.*, Jan. 1937, p. 35; printed in Appendix XI-1, *infra*.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Official Journal*, Jan. 1937, pp. 8-10.

the meaning of Article 11. He noted that efforts were being made to improve the Non-Intervention scheme, and urged that the Council show itself favorable to strict enforcement of non-intervention. He alluded to the moves which were being made by the British and French Governments to mediate for the termination of the strife and suggested that the Council should display sympathy therefor, and concluded with expressing the thought that the League might well offer to place its technical services for humanitarian relief at the disposal of Spain for the mitigation of the civilian suffering.<sup>18</sup>

The French, New Zealand, Russian and Chilean representatives supported these suggestions. M. Viénot of France pointed to the Non-Intervention Accord as an embodiment of the principles of Article 10 of the Covenant, and said that he believed that the Council would be rendering a major influence for peace if it utilized its prestige for the unqualified support of the principle of strict non-intervention. Adverting to the insistence of the Spanish delegate that Spain desired no intervention in her internal affairs by the League, M. Viénot urged, nevertheless, that the League and Spain both contemplate mediation for termination of the conflict.<sup>19</sup> M. Potemkine of Russia attempted to distinguish between armed support to an established government and to rebels, denying that the former constituted interference in the internal affairs of a state. Doubt was expressed by M. Komarnicki of Poland as to the wisdom of the League's attempting to take any measures in view of the international situation, and the fact that the Spanish appeal asked for no League intervention, although he ended by making it clear that his country would support the suggestions of the British and French Governments.

The representatives of Chile and Bolivia pointed to the controversy which had arisen relative to the right of asylum in the legations at Madrid.<sup>20</sup> Señor del Vayo expressed appreciation for the views put forward by the South American representatives and said that the Spanish Government was prepared to examine the question directly with each of the governments concerned.<sup>21</sup>

#### COUNCIL RESOLUTION AFFIRMING OBLIGATION OF NON-INTERVENTION

The draft Resolution, which was unanimously adopted by the Council, affirmed the obligation of states to refrain from intervening

<sup>18</sup> *Ibid.*, pp. 11-13.    <sup>19</sup> *Ibid.*, pp. 13-17.    <sup>20</sup> *Ibid.*, pp. 19-20.    <sup>21</sup> *Ibid.*, p. 21.

in the internal affairs of other states, recommended that the Non-Intervention Accord be made as stringent as possible, expressed sympathy for the mediation efforts of Britain and France, and authorized the Secretary-General to make available the technical services of the League for humanitarian needs or for the reconstruction of Spain.<sup>22</sup> Important was the fact that the Council took note that questions of internal affairs were capable of coming within the ambit of League jurisdiction, and that the Covenant obligations under Article 11 "ought to be maintained irrespective of the internal régimes of states."

It may be objected that this did not go far enough. Perhaps that is true. However, given the prevailing conditions, it seems doubtful whether more would have been accomplished by actually naming the aggressor nations unless the members were willing, as they obviously were not, to go ahead to the adoption of sanctions against them. It must not be forgotten that the fundamental purposes of the League are the preservation of peace and the promotion of coöperation. It is possible that the more effective course of action may often lie in the quieter, less dramatic path of constantly emphasizing and strengthening the ties of coöperation and commonality of opinion which still exist. This is what the British and French sought to do throughout the Spanish crisis.

Taking advantage of the availability of the League's technical services, the Spanish Government requested that a health mission be sent to Spain to study conditions and to make recommendations for their amelioration.<sup>23</sup> The mission spent fifteen days in Loyalist territory.<sup>24</sup> After extensive interviews and observations, the experts stressed the need of reinforcing general public health services, making complete preparations for combating a possible typhus epidemic, and aiding the government to secure busses for the evacuation of a large portion of the civil inhabitants of Madrid.<sup>25</sup>

#### CONSIDERATION OF PROBLEM OF ASYLUM, FEBRUARY, 1937

When the Report of the Health Mission came before the Council, relatively little attention was devoted to the actual contents of the Re-

<sup>22</sup> *Ibid.*, pp. 18-19; printed in Appendix XI-2, *infra*.

<sup>23</sup> *Official Journal*, Feb. 1937, p. 227.

<sup>24</sup> See Record of its activities, *ibid.*, pp. 207-209.

<sup>25</sup> Letter to the Spanish Foreign Minister, Jan. 11, 1937, *ibid.*, p. 209; Report of the Mission, *ibid.*, pp. 210-227; Remarks of Dr. Lasnet to the Council, Jan. 25, 1937, *ibid.*, pp. 94-95.

port. Instead, the debate was turned by the Chilean representative onto the question of asylum for political refugees in foreign legations in Madrid and the evacuation of such persons from Spain, concerning which the Report had made no suggestions.<sup>26</sup> Pointing to the large number of persons (3,000-4,000) being given asylum in the embassies and legations at Madrid, Señor Edwards of Chile said that there were not only serious questions of health involved in the overcrowded quarters, but humanitarian and moral issues at stake. Concern for the situation was not limited to one or a few countries, for the embassies or legations of fifteen states had granted asylum in Madrid. (The Argentine, Belgium, Bolivia, Chile, China, Cuba, Dominican Republic, Mexico, The Netherlands, Norway, Panama, Peru, Poland, Roumania, and Turkey.) Adverting to the legal aspect of the question of whether a right to grant asylum existed, allusion was made to the facts that among the Latin American states there were the Havana and Montevideo Conventions on Asylum;<sup>27</sup> that asylum was being granted by European as well as Latin American states as a matter of practice; that during the civil disturbances of the nineteenth and twentieth centuries, asylum had been particularly exercised in Spain, and by Spain in Latin America; that there could be no lawful basis for distinguishing between the extra-territoriality of warships and legations. The agreement to negotiate, reached December 12, was referred to, but it was noted that nothing had resulted during the weeks since then, and that so serious had become the crisis that the diplomatic corps had united in asking that the matter be brought before the Council, and had proposed a plan whereby, Spain agreeing, the evacuation of the refugees would take place under the supervision of a Special Commission of the League of Nations, which plan was submitted to the Council for adoption.<sup>28</sup>

Replying, Señor del Vayo said that while of course Spain was not a party to nor bound by the Pan-American conventions, "the Spanish Government had recognized the right of asylum in practice." It was denied that progress in negotiation had not been achieved. On the contrary, negotiations were proceeding satisfactorily with the Argen-

<sup>26</sup> *Official Journal*, Feb. 1937, pp. 64-69, 98, 135-136.

<sup>27</sup> M. O. Hudson, *International Legislation*, Vol. IV, pp. 2412-2415; *U. S. Treaty Information Bulletin*, No. 55, April 30, 1934, p. 21.

<sup>28</sup> *Ibid.*, pp. 99-100. Reproduced, *infra*, Appendix XI-3. Remarks of Señor Edwards, *Official Journal*, *op cit.*, pp. 96-100. The Polish representative associated his government with the views expressed by the Chilean representative. *Ibid.*, p. 101.

tine and the Mexican Republics, and the avowal of readiness to negotiate with all others, individually, was repeated.<sup>29</sup> Negotiations having gone on outside of the Council between the Spanish and Chilean delegates under the friendly mediation of the President of the Council, the representative of China, it became apparent that the impasse lay in the proposition of international intervention for the safeguarding of the refugees.<sup>30</sup> After the expression of manifest good-will and desire for conciliation on both sides and following the friendly guidance of other members of the Council, it was presently agreed that the President's report on the conversations was satisfactory, that negotiations should commence within a brief time at London to resolve the asylum problem as between Chile and Spain. In the report presented by the President of the Council, of which the Council took formal notice, mention was made of the conclusions of the Health Mission's Report, and the fact of transmission of the same to the Health Committee. Reference was made to the conversations regarding the evacuation of those who had been granted asylum in the legations and embassies, which had taken place within and without the Council, and to the agreement which had been reached on humanitarian grounds between Spain and Chile for the commencement of direct negotiations.<sup>31</sup>

The League of Nations may be said to have exercised an important and influential rôle in bringing the troublesome issue of asylum and evacuation of refugees to an amicable conclusion. Without formally certifying the legality of the granting of asylum in diplomatic quarters to refugees in time of civil disturbance, the League of Nations threw the weight of its collective influence unitedly behind the humanitarian practice of granting such refuge and of evacuating fugitives to foreign states. Without the focusing of world opinion as it transpired, the controversy might well have lagged on into serious international complications further burdening the strained atmosphere. If final settlement was not actually achieved in or through the League, at least the League effectively discharged its primary concern of promoting international coöperation and negotiation, steps of no inconsiderable value.

<sup>29</sup> *Ibid.*, pp. 101-102.

<sup>30</sup> *Ibid.*, p. 127.

<sup>31</sup> The President's Report will be found in Appendix XI-4, *infra*.

## SECOND APPEAL AGAINST FOREIGN INTERVENTION, MAY, 1937

A second appeal<sup>32</sup> by the Spanish Government, in May, 1937, asked the League to examine under the terms of Article 11 the international complications brought about by the "development of foreign intervention in Spain."<sup>33</sup> In presenting the appeal, Señor del Vayo pointed to the evidence of German and Italian intervention in the war, laying special stress upon the fighting at Guadalajara, and upon the unrestricted bombing of Guernica, terming the state of affairs "open aggression" and "sham non-intervention." The Council was not asked to discuss the destruction of Guernica, but it was requested to take some resolute and bold stand in the face of current events. The Non-Intervention system, the Observation and Control Scheme, and the mediation plans were all deplored as being "ill-starred endeavors." The proposition of the withdrawal of foreign combatants was spoken of as promising better results, provided the distinction was made between foreign armies and foreign volunteers in Spain, and the former group withdrawn. The efforts of certain Powers to secure agreements for "humanizing the war," were brushed aside with the observation that the most effective method of accomplishing this would be to stop the intervention of foreign states. In conclusion, Señor del Vayo called upon the League not to sacrifice those present at the Council to those who were absent.<sup>34</sup>

Again, as before, the British and French representatives, assisted this time by M. Sandler of Sweden, voiced sympathy for the Spanish cause, expressed opposition to the inhumane bombings which had occurred, deplored the manifest departures from the Non-Interven-

<sup>32</sup> Pending the next appeal to the League, two communications relative to foreign intervention were addressed to the Secretary-General by the Spanish Government and circulated upon request to all members of the League. A document bearing upon the same problem was also communicated by the Mexican Government. No action was immediately requested or taken on the basis of these documents. *Official Journal*, March-April 1937, pp. 262-263, 264; *infra*, Appendix XI-5-6-7.

<sup>33</sup> *Official Journal*, May-June 1937, p. 572; *infra*, Appendix XI-8. At the time that the Council came to the consideration of this item on its agenda, May 28, 1937, the Spanish Government published and presented to the Council a "White Book" entitled in Spanish, "La agresión italiana—Documentos ocupados a las unidades italianas en la acción de Guadalajara," containing documents and facsimiles purporting to show that complete units of the Italian army under Italian supply and command were present, occupying territory, and constituting in fact "an invasion of Spain by Italy." *Official Journal*, Spec. Suppl. No. 165.

<sup>34</sup> *Official Journal*, May-June, pp. 317-320.

tion Accord; but urged that the Council content itself with lending its influence to the promotion of the efforts being made in London to strengthen the Non-Intervention system, to promote the withdrawal of foreign combatants, and to condemn the bombardment of open towns and non-combatant populations.<sup>35</sup> M. Litvinoff of Russia supported the Spanish case, arguing that Spain was being submitted to "aggression in its crudest form," and to "foreign invasion and violation of its territorial integrity and political independence." Quite erroneously, he asserted that the League was faced for the first time with "armed intervention in the internal affairs of a European state"; and he pleaded with the Council to take action lest inaction create precedent and promotion of subsequent interventions of a similar sort.<sup>36</sup> The representative of New Zealand urged that the Council do more than merely endorse once more the activities taking place in London. He urged that either a Committee of the Council be set up, or that the powers of the Non-Intervention Committee be enlarged to help the Spaniards to put an end to the war.<sup>37</sup>

#### COUNCIL RESOLUTION OF MAY 29, 1937

The resolution unanimously adopted by the Council took note of the views and observations expressed at the Council, of the agreements and efforts being made to secure strict non-intervention, the withdrawal of volunteers, and the alleviation of the horrors and dangers of war to civilians. It made reference to the previous resolution affirming the obligation upon states to respect the territorial and political independence of others. It expressed hope that the international efforts to terminate the strife might be successful. Finally, it condemned the "employment, in the Spanish struggle, of methods contrary to international law and the bombing of open towns."<sup>38</sup>

<sup>35</sup> *Ibid.*, pp. 320-321, 323-325, 326.

<sup>36</sup> M. Litvinoff might have mentioned Soviet intervention at Enzeli, Persia, in 1920; Roumanian intervention in Hungary at the time of the Bela Kun uprising; Italian bombardment of Corfu; the crossing of the Bulgarian frontier by Greek troops in 1925; the incursion of Bulgarian *comitadji* bands into Yugoslav territory over a period of more than a decade; the occupation of the Ruhr in 1923; the Austrian *putsch* by German Nazis in 1934.

<sup>37</sup> *Ibid.*, pp. 325-326.

<sup>38</sup> Text in Appendix XI-9, *infra*.



## APPEAL AGAINST ITALIAN MILITARY ACTIVITIES, AUGUST, 1937

A third appeal was addressed to the League Council, again under Article 11, in August, 1937, following the bombing and torpedoing of a number of Spanish vessels by unknown submarines and aircraft during the summer months.<sup>39</sup> The appeal charged aggression and "criminal conduct" on the part of the Italian Government and Navy,<sup>40</sup> and asked that the matter be placed on the Council agenda. It was left to the judgment of the President of the Council whether the Council should be called into immediate, extraordinary session. He decided that both the Spanish appeal and the regular session of the Council should be postponed until after the Nyon Conference, which was called to deal with the submarine menace.

When the appeal came before the Council on September 16, 1937, Dr. Negrín stated that the only proposition put before the Council at this time was that relating to the insecurity of navigation in the Mediterranean. Bitter protest was expressed that Spain had not been invited to the Nyon Conference and that Spanish vessels had been exempted from the protective measures embodied in the final Arrangement. It was alleged that the insurgents possessed not one submarine, and that no sanction was established for submarine attacks carried out in conformity with the 1930 rules. "Establishing a sanction of a collective character for a certain category of attack ensures that such attacks come to be regarded as specific violations of international law, whereas attacks outside this special category are considered as of, so to speak, a private character." Attention was drawn to the historic practice of regarding all attacks upon ships on the high seas in time of peace as unlawful and piratical, to the fact that Spain was at war with no state, and to the unhappy position into which she was now thrust by being given no collective security for her ships,

<sup>39</sup> Document C.335.M.226.1937.VII. See also the Communication circulated through the League in June, 1937, relative to the bombing of the German cruiser *Deutschland*, *Official Journal*, July, 1937, pp. 602-603.

<sup>40</sup> Portions of the Appeal are reproduced in Appendix XI-10, *infra*. The lengthy recitation of material facts has been omitted. Examining carefully all of the evidence set forth in the Note, the destruction of only one vessel by identifiable Italian craft appears certain. In all other cases the testimony and evidence are irregular, confused, uncertain, and much reliance is placed upon conjecture. The original evidence presented was later supplemented by another document containing depositions of the master and crew of one of the Spanish vessels. League of Nations, Document C.389.M.259.1937.VII.

and no legal backing for her counter-attacks upon the raiders of "unknown nationality." Italy was designated as the instigator and perpetrator of the terrorism in the Mediterranean, and the Council was called upon to banish unreality, and to make good the deficiencies of the Nyon Arrangement respecting security for shipping in the Mediterranean.<sup>41</sup>

Little answer was made to the Spanish observations. The Nyon Arrangement was defended by the delegates of France and Sweden, who emphasized that the failure to provide penalties for attacks carried out in accordance with the 1930 rules in no way legalized the attacks which, under existing conditions, were unlawful anyhow.<sup>42</sup> The only other representatives to speak were those of Poland and Bolivia. The former said that he could not vote for a resolution dealing with a matter to which his government was not a party, and the latter objected to the League being called upon to approve actions taken outside of its doors which should have been taken inside of them.

COUNCIL RESOLUTION SUPPORTING NYON ARRANGEMENT,  
OCTOBER, 1937

The brief resolution, which was hastily approved, took note of the Nyon instruments and declared that "all attacks of this kind against any merchant vessels are repugnant to the conscience of the civilized nations which now finds expression through the Council."<sup>43</sup>

It is greatly to be regretted that the Council resolution employed such a vague and meaningless expression as "repugnant to the conscience of the civilized nations," when the attacks against foreign vessels were manifestly contrary to unquestionable principles and rules of international law. The explanation for the wording undoubtedly lies in the desire to satisfy the Spaniards by bringing the attacks upon their vessels within the same field as attacks upon foreign vessels. It would have been much better, however, had the resolution separated the two categories and dealt with each in a separate paragraph, declaring the attacks upon foreign vessels to be contrary to international law, and expressing condemnation of the attacks upon Spanish vessels in the more general tone written into the resolution as it stands.

<sup>41</sup> *Official Journal*, Dec. 1937, pp. 914-917.

<sup>42</sup> *Ibid.*, pp. 917-919.

<sup>43</sup> *Ibid.*, pp. 944-945; *infra*, Appendix XI-11.

## DEBATE AND VOTE IN ASSEMBLY, SEPTEMBER, 1937

One of the best statements of the Spanish case was made by Dr. Negrín, speaking before the Assembly in September, 1937. Civil war as such, he averred, was not the concern of the League of Nations. But a "war of invasion has overshadowed the civil war," and this, he claimed, was a matter of paramount concern to the League. "We have always considered," he argued, "that the greatest risk of the Spanish Civil War becoming a European conflagration lay, and still lies, in the fact that international law, instead of being applied, has been sacrificed to the demands of those who have made blackmail by war an instrument of their foreign policy." In conclusion, he asked recognition of the following requests: "(1) That the aggression of Germany and Italy in Spain be recognized as such. (2) That, in consequence of this recognition, the League examine as rapidly as possible the means by which that aggression may be brought to an end. (3) That full rights once more be given to the Spanish Government freely to acquire all the war material it may consider necessary. (4) That the non-Spanish combatants be withdrawn from Spanish territory. (5) That the measures to be adopted for security in the Mediterranean be extended to Spain, and that Spain be granted her legitimate share in them."<sup>44</sup>

Pursuant to request, the Spanish situation as outlined was referred to the Sixth Committee of the Assembly, which, after some heated debate,<sup>45</sup> reported the following important resolution to the Assembly for its consideration:

## The Assembly:

(1) Associates itself with the Council in recalling that it is the duty of every State to respect the territorial integrity and political independence of other States—a duty which, for Members of the League of Nations, has been recognised by the Covenant;

(2) Affirms that every State is under an obligation to refrain from intervening in the internal affairs of another State;

(3) Recalls the special undertakings entered into by the European Gov-

<sup>44</sup> *Official Journal*, Spec. Suppl. No. 169, pp. 55-59. The Spanish thesis was sustained by the delegate of Mexico (*ibid.*, pp. 68-70), while the British, French, and Portuguese representatives reiterated their traditional views on the Non-Intervention system (*ibid.*, pp. 59, 63-64, 72). The Argentinean representative called attention again to the question of asylum, but made no request for formal action (*ibid.*, pp. 96-98).

<sup>45</sup> *Journal of the 18th Session of the Assembly*, pp. 190-194, 206-209, 243-244, 257.

ernments, and the London Non-Intervention Committee which, in the intention of the countries to whose initiative it owes its origin, was set up for the purpose of restricting the Spanish conflict and thereby safeguarding peace in the rest of the world;

(4) Regrets that not merely has the London Non-Intervention Committee failed, despite the efforts of the majority of its Members, of which the Assembly expresses its appreciation, to secure the withdrawal of non-Spanish combatants taking part in the struggle in Spain, but that it must to-day be recognised that there are veritable foreign army corps on Spanish soil, which represents foreign intervention in Spanish affairs;

(5) Observes that the Council in its resolution of May 29th last justly described this withdrawal as 'the most effective remedy for a situation, the great gravity of which, from the standpoint of the general peace, it feels bound to emphasise, and the most certain means of ensuring the full application of the policy of non-intervention';

(6) Sincerely trusts that the diplomatic action recently initiated by certain Powers will be successful in securing the immediate and complete withdrawal of the non-Spanish combatants taking part in the struggle in Spain;

(7) Appeals to the Governments, which must all be animated by the desire to see peace maintained in Europe, to undertake a new and earnest effort in this direction;

And notes that, if such a result cannot be obtained in the near future, the Members of the League which are parties to the Non-Intervention Agreement will consider ending the policy of non-intervention;

(8) Requests the Council, in view of the provisions of Article 11 of the Covenant of the League, to follow attentively the development of the situation in Spain and to seize any opportunity that may arise for seeking a basis for a pacific solution of the conflict.<sup>46</sup>

Opening the discussion on the draft resolution, Mr. De Valera said that the Irish Free State sympathized wholeheartedly with the greater part of the sentiments and recommendations contained therein, but that his government had no thought of terminating the Non-Intervention system, and could not vote for the resolution so long as it contained the second section of paragraph 7, hinting at termination.<sup>47</sup> Amendments were offered by the Hungarian and Austrian delegations which sought to change paragraph 4 so that it would read "army corps on both sides on Spanish soil," or "armed forces on both sides"; and which sought to alter paragraph 7, section 2, to read "certain members of the League," instead of "the Members . . . will consider ending the policy of non-intervention," or to read "might consider end-

<sup>46</sup> *Official Journal*, Spec. Suppl. No. 169, pp. 99-100.

<sup>47</sup> *Ibid.*, pp. 100-101.

ing." These amendments were defeated by the Assembly, with only Albania, Austria, and Hungary voting for them.<sup>48</sup>

Dissatisfaction with the resolution was voiced by other states. The delegate from Bolivia stated that so long as paragraph 2 of Article 7 stood, Bolivia would abstain from voting, it being the opinion of that state that the taking of collective measures prior to a resolution by the Council or Assembly was wrong. A formal declaration was then made and read into the record, in which Bolivia recalled that during the Chaco war, Spain had said she "could not agree to any measure which might imply discrimination between the two belligerents," that at the present time Bolivia could not support any view or measure which might, directly or indirectly, favor one of the two contending parties at the expense of the other, and that it stood behind the policy of non-intervention.<sup>49</sup> The Venezuelan delegate indicated that his country would also abstain from voting, objecting to the policy of inaction because a non-intervention committee was sitting in London. Dr. Gie of the Union of South Africa said that his government could not become a party to a policy of threat, which was implied in the second part of paragraph 7. It was indicated that Portugal would not support the resolution because it had not been proved that there were foreign "army corps" unlawfully present on Spanish soil. The delegate from Chile said he could not vote for the resolution, since it related to facts or undertakings to which Chile was not a party. The Argentine Republic, it was said, strongly favored all moves designed to bring about a cessation of hostilities, but could not vote for a resolution which would bind it to depart from its policy of strictest impartiality toward the contest. The stand of the Uruguayan Government was associated with that of the representatives of the other South American states who refused to vote for a resolution dealing with extra-League undertakings. The Swiss delegate announced that Switzerland must also abstain from voting, in conformity with the policy of neutrality recently announced by President Motta.<sup>50</sup>

Concluding the debate, prior to the voting on the resolution, the Spanish delegate avowed readiness to accept the resolution, even though it did not go as far as might have been wished, and was obviously a compromise resulting from "a very careful study of every aspect of the problem, of every point of issue." It was reiterated that

<sup>48</sup> *Ibid.*, pp. 106-107.

<sup>49</sup> *Ibid.* pp. 101-102.

<sup>50</sup> *Ibid.* pp. 102-105.

the internal problems of Spain, *per se*, were of no concern to the League of Nations. Only the question of foreign intervention was germane to its competence, and this amounted to a clear case of aggression upon which the Spanish representative professed inability to comprehend how any nation could pursue an attitude of neutrality.<sup>51</sup>

When the vote was taken, it was decided, on the application of the Hungarian delegation, to first vote separately upon paragraphs 4 and 7 to which objection had been expressed. The result of the voting was the same on each paragraph, 32 states voting in favor of the paragraphs, 12 abstaining, and 4 voting against them, the latter comprising Albania, Austria, Hungary, and Portugal. Pursuant to the rules of procedure, the President declared the paragraphs adopted, only a majority vote being required. On the vote on the resolution as a whole, Austria and Hungary switched into the abstention group, leaving Albania and Portugal as the only countries voting against the resolution, which therefore failed of adoption, unanimity not having been achieved.<sup>52</sup>

Thus ended a comprehensive and vital effort on the part of the League of Nations to deal with this serious international crisis. This defeat came in part through the vote of a country really representing another member state which refused to be present and to defend its own position in open forum, and in part through an adverse vote due to disagreement over the meaning and use of two adjectival words inserted into the resolution. How fateful can be the use of mere words in the game of international coöperation! Considering that the resolution merely recorded in somewhat more specific phraseology a determination and an expression of opinion already voted by the Council, and in view of the fact that momentarily it called for the taking of no dangerous steps in advance, the failure may be deplored. On the other hand, the refusal of any state to vote for a measure can not be

<sup>51</sup> *Ibid.*, pp. 105-106.

<sup>52</sup> Countries voting for the resolution were: Afghanistan, Australia, Belgium, United Kingdom of Great Britain and North Ireland, Canada, China, Colombia, Czechoslovakia, Denmark, Ecuador, Egypt, Estonia, Finland, France, Greece, Haiti, India, Iran, Iraq, Latvia, Lithuania, Mexico, The Netherlands, New Zealand, Norway, Poland, Roumania, Spain, Sweden, Turkey, Union of Soviet Socialist Republics, Yugoslavia. States abstaining from voting: Union of South Africa, Argentine Republic, Austria, Bolivia, Bulgaria, Chile, Cuba, Hungary, Irish Free State, Panama, Peru, Switzerland, Uruguay, Venezuela. States voting against the resolution were: Albania, Portugal. *Ibid.*, p. 108.

condemned on legal grounds in a society of sovereign states. Also, the forthright statement of obligation to refrain from intervening in other states, the definition of foreigners in Spain as "foreign army corps," the notation that the Powers will consider ending non-intervention if foreigners cannot be withdrawn, and the request that the Council follow the situation and "seize any opportunity that may arise for seeking a basis for a pacific solution of the conflict," all were replete with possible hidden meanings, implications, and bases of future action, which some Powers might well hesitate to see taken. While the League unquestionably performed its function of focusing world opinion, the picture revealed was after all only a reflection of an opinion already known to be divided, confused, and uncertain of the path which should be followed. As has been remarked many times in League circles, more cannot be expected of the League than the member states will permit, unfortunate as may be both this general principle and its application to the Spanish strife.

#### APPEAL AGAINST NON-INTERVENTION SYSTEM, APRIL, 1938

Impelled by the continuance of the factors underlying former appeals, and undeterred by the treatment which had been accorded to them, the Spanish Government once again appealed to the Council on April 19, 1938.<sup>53</sup> Señor del Vayo again belabored the international grievances and woes of his government, asking detailed examination and investigation of the charges brought forward, and a termination of the Non-Intervention system.<sup>54</sup> No alteration in the diplomatic alignment resulted. Each of the Powers represented reiterated the views already expressed. An attempt to limit the debate to one round of expression of opinion was forestalled, but little was gained, save to reveal further the determination of certain great Powers to prevent any serious action being taken. Señor del Vayo demanded to know "in the name of what morality and justice" the present status could be continued longer and the Spanish Government denied the right to purchase and export war materials, but it was only answered that intervention was not unilateral and that policies pursued previously would be continued.

<sup>53</sup> *Official Journal*, May-June 1938, Annex 1710, p. 533; *infra*, Appendix XI-13.

<sup>54</sup> *Official Journal*, *op. cit.*, pp. 325-329.

## COUNCIL VOTES AGAINST SPAIN, MAY, 1938

In an effort to place the delegates on record on the issues at stake, a draft resolution was offered recalling the draft resolution submitted to and defeated the Assembly in September, 1937, and inviting the member states forthwith to end the policy of non-intervention.<sup>55</sup> A formal vote upon this significant question of policy was ordered to be taken after an immediate recess of an hour and a half, which obviously left insufficient time for most representatives to consult their home governments—a most extraordinary procedure. As might have been anticipated, the measure was defeated, to the accompaniment of an unusually large number of abstentions. Voting in favor of the resolution were Spain and the Soviet Union; voting against it were Great Britain, France, Poland, and Roumania; abstaining from voting were Belgium, Bolivia, China, Ecuador, Iran, Latvia, New Zealand, Peru, and Sweden.<sup>56</sup>

It seems unfortunate that such a serious matter should have received such cursory treatment. Such domineering tactics on the part of certain so-called democratic states able to control the procedure of the League will never be calculated to improve the League's chances of satisfactorily coping with international problems, of inducing states outside of the League to look with favor upon joining that body, or of inducing states now members to continue therein. Admitting that under certain circumstances concentrated handling of difficult problems may be advantageous, it would, nevertheless, have seemed the part of wiser statesmanship to have used this occasion as a means of soliciting counsel and suggestions from the states less intimately bound up with the Spanish affair and hence able to view the international scene with a slightly different perspective, and to have given the Spanish allegations the considerate reflection and discussion which they inherently and unquestionably merited.

## CONSIDERATION BY THE ASSEMBLY, SEPTEMBER, 1938

More fruitful results accompanied the presentation of the Spanish situation at the September, 1938, Assembly and Council. Premier Negrín, speaking before the Assembly on September 21, announced

<sup>55</sup> *Ibid.*, p. 356; *infra*, Appendix XI-14.

<sup>56</sup> *Ibid.*, p. 358.



the decision of the Loyalist Government to effect the withdrawal of all foreign volunteers from its armed forces, and, in a draft resolution submitted to the Assembly, asked this body to request the Council to appoint an international commission "whose duty it would be to satisfy the League of Nations, and, through it, the public opinion of the world, that that withdrawal is carried out absolutely and completely." <sup>57</sup> Supporting the draft resolution before the Sixth Committee to which it was referred, Señor del Vayo said that his Government found it impossible to accept the scheme of the Non-Intervention Committee for the withdrawal, on the ground that Spain was not represented upon that committee while the Powers which had committed the aggression of sending troops to Spain were represented there. Spain found it natural, he added, to appeal to the League of Nations, for "the question was merely that of affording public opinion a guarantee that the Spanish Government's decision had been fully carried out." <sup>58</sup> Notwithstanding the views expressed by several delegates in favor of handling the entire matter through the Non-Intervention Committee, <sup>59</sup> an acceptable resolution was approved by the Committee, and subsequently by the Assembly acting by summary procedure. <sup>60</sup> This resolution read: "The Assembly expresses the wish that the Council should include in its agenda the proposal submitted to the Assembly on September 21, 1938, by the Spanish Delegation and will consider it in the light of the discussions which have taken place in the Sixth Committee."

#### ESTABLISHMENT OF WITHDRAWAL-SUPERVISION COMMISSION

The Council readily accepted the recommendation of the Assembly, and, at its session on October 1, adopted a Resolution authorizing the creation and dispatch to Spain of such a commission, to note the measures of withdrawal adopted by the Spanish Government and to report to the next session of the Council on the effectiveness of the measures and upon the completeness of the departure of foreign

<sup>57</sup> *Journal of the 19th Session of the Assembly of the League of Nations*, Sept. 22, 1938, pp. 140-141. The full text of the draft resolution will be found in Appendix XI-15, *infra*.

<sup>58</sup> *Journal, op. cit.*, Sept. 27, 1938, p. 233.

<sup>59</sup> *Ibid.*, pp. 273-274.

<sup>60</sup> *Ibid.*, Oct. 1, 1938, p. 285.

volunteers from Loyalist Spain. In its Resolution the Council carefully stated that it "does not assume any responsibility either for the method of withdrawal or for the destination given to the persons withdrawn." Rather than appointing the members of the Commission directly, the Council authorized the representatives of Great Britain, France and Iran to select the Commission and be responsible for its dispatch to Spain.<sup>61</sup>

The membership of the Commission was composed of General Jalander of Finland, Lieutenant Colonel Homo of France, and Colonel Molesworth of Great Britain, and was supported by a technical and clerical staff of 19.<sup>62</sup> The Commission assembled on the Spanish frontier on October 14, and proceeded shortly to Barcelona where it commenced overseeing the demobilization and departure of foreign volunteers *via* Perpignan.<sup>63</sup>

### CONCLUSIONS

In conclusion it may be said that the League was called upon for eight purposes: (1) To be a medium for the circulation of documents and the broadcasting of grievances; (2) To consider and to condemn foreign intervention in the internal affairs of member states; (3) To facilitate agreement upon the right of asylum in embassies and legations, and the right of removing persons given such asylum to places of safety out of the country disturbed; (4) To condemn war practices not in accord with international law or humanitarian rights; (5) To procure security for merchant shipping in the Mediterranean; (6) To prevent a rupture of international peace; (7) To oversee and report upon the withdrawal of foreigners from Loyalist Spain; (8) To report on aerial bombardment of open towns and cities, and of civilian populations.

In contrast, it may be observed that the League was not called upon (1) to intervene in Spain proper for the humanization or termi-

<sup>61</sup> Text will be found in Appendix XI-16, *infra*.

<sup>62</sup> *New York Times*, Oct. 13, 1938.

<sup>63</sup> See Chapter III, *supra*, for discussion of the withdrawal of foreign forces. The Report of the Commission to the Council of the League on Jan. 16, 1939, will be found in *Document C.34.M.18.1939.IX*. See also *Document C./104th Session/ P.V. 2(I)*. See also Report of the League of Nations Commission for Investigation of Air Bombardments in Spain, *Official Journal*, January, 1939, pp. 28-34. This Report covers a series of bombardments of Barcelona, Alicante, and Tarragona from Aug. 20 to Dec. 31, 1938.

nation of hostilities,<sup>64</sup> or (2) to apply sanctions against foreign intervenors.

How well did the League meet the demands placed upon it? It:

(1) Provided a ready means of publication and circulation of certain important facts and charges. It did not call forth the desirable refutation or explanations from the Powers most concerned, or institute itself an international board of inquiry to examine the facts and charges and to make a report concerning their validity and disposal—as precedent might have suggested.

(2) Condemned foreign intervention in the internal affairs of another state as contrary to the principles of international law in general and to Article 10 of the Covenant in particular. Without independent inquiry into the basic facts involved, the Council consistently supported the principle and system of non-intervention being operated outside of League jurisdiction as proper, suitable and sufficient for the moment for the preservation of European peace.

(3) Evoked acceptance by Spain of the practice of asylum in embassies and legations, and public statement by the representatives of that country of readiness to negotiate outside of the League for the conclusion of bi-lateral agreements for the safe conduct out of the country of persons given asylum. The League did not record formal approval of political asylum either in principle or in practice.

(4) Condemned unrestrained aerial bombing of non-combatant populations, and unwarned torpedoings or bombings of merchant vessels (Spanish as well as foreign) as violating the collective "conscience" of mankind and humanitarian rights. It did not declare such unconscionable acts violations of international law.

(5) Indicated its support of the agreements concluded at Nyon and deposited in its archives. It did not consider the adoption of sanctions under Article 16 against acts of piracy or aggression connected with the strife.

(6) Supported the moves made in London and Paris for the restriction and termination of the warfare as the best immediate ways of

<sup>64</sup> At the 1938 Assembly the Norwegian delegation proposed a resolution calling upon the Council to follow, under Article 11, events within Spain. This was opposed by the British, Bolivian, and Spanish representatives on the ground that the Covenant gave no mandate regarding such internal affairs, and the resolution was withdrawn, although a substitute one was passed asking the Council to note the discussion. *Journal of the 19th Session*, Sept. 30, 1938, pp. 274-275; *ibid.*, Oct. 1, 1938, p. 285.

safeguarding international peace. It took no independent measures to promote these ends, apart from affording the use of its technical services for the work of social reconstruction.

(7) Accepted the invitation of the Spanish Government to appoint and send an international commission to Spain to oversee and report upon the completeness of the withdrawal and departure of foreign volunteers from the Loyalist forces.

(8) Investigated and reported on aerial bombardment of civilian areas, clearly separated from military objectives.

The history of the Spanish civil disturbance and of the extent to which it figured in the work of the League of Nations reveals clearly that insurrection and civil war are not merely domestic problems. The issues at stake in Spain cut across European politics and international relations. Few civil wars have not done so, for civil warfare does not exist in a political vacuum. It is a part of the political life and atmosphere with which all states are associated. It is not a phenomenon which can be ignored or circumscribed as a matter exclusively of domestic concern. It is a factor affecting in one way or another, sooner or later, the political ideologies and institutions of many states and international organizations. Whether it cause international complications by direct action or by induction, civil strife remains war in the broader political, as distinguished from the purely legal, sense, and a movement likely to affect "the good understanding between nations upon which peace depends."

M. Briand once remarked before the Council, "We have not always worked upon the geometrical principle that a straight line is the shortest distance between two points." The League certainly did not take a straight line in dealing with the Spanish strife. The adoption of a resolution directing the contestants to cease hostilities would have been beyond the competence of the League and would have been useless. Likewise, the adoption of a resolution ordering foreign partisans to cease their intervention, and to withdraw their nationals from Spain, would have been greeted with insubordination. Procedure under Article 11 was not exhausted, and Articles 12, 13 and 15 were hardly tapped. However, if not all of the machinery employed in such cases as the hostilities on the Greco-Bulgarian frontier, the Bondezwarts and Jebel Druse uprisings, the Manchurian, Leticia, and

Ethiopian disputes was resorted to, it must not be overlooked that the precise factors which were presented to the League as the basis for its action on the Spanish appeals differed extensively from those present in the other instances mentioned. When all is said and done, the Covenant of the League of Nations is a legal instrument binding the League to keep within certain limitations.

The record of the League in this affair must be studied for the light which it throws upon the Geneva institution for the years to come. More clearly than ever, the League revealed its utter dependence upon the states composing it, and its inseparability from the policies and motives of state action. It has demonstrated the crippling effects of the lack of universality and of the absence of states intimately tied up with the problems at hand. It has shown the delay and difficulty imposed upon it by being required to await the initial presentation of a formal appeal before undertaking consideration of matters rapidly becoming dangerous and involving national honor and position. It has emphasized the need of standing boards of inquiry and fact-finding, which can readily supply information on contested facts. It has pointed to the shortcomings of the system of being required to deal only with an established and recognized government, when in fact there may be another authority within a state, acting in the international realm, recognized by some states, and having control over large portions of a national domain. It has reëmphasized the paralyzing effect of the requirement of unanimity in the adoption of resolutions.

Notwithstanding these deficiencies, the League certainly did not entirely "fail" in the Spanish crisis. On the contrary, it helped to bring the engulfing dangers of the civil strife within the orbit of collective control. Taken in conjunction with the Non-Intervention Accords and system, and with the Nyon Conference and Arrangements, it may be said that these various efforts mark something of a triumph for the collective system of handling international difficulties, and are unique in the long history of civil strife. The weight of the League's influence was placed behind the principle that a peaceful and orderly society of states is predicated upon the fulfillment of duties as well as upon the protection of rights.

## CHAPTER V

### PROBLEMS IN DIPLOMATIC AND CONSULAR RELATIONS

COMPLICATIONS in the official relations between a state torn by civil strife and foreign states are frequent occurrences. Normally these difficulties revolve around the question of maintaining diplomatic relations with the established government and the commencement of negotiations with the insurgent authorities. During the Spanish strife a number of other problems arose, embracing in particular such matters as the departure of nearly all of the heads of missions from Spanish territory; the setting-up of official legations and embassies accredited to Spain in French territory; assault upon foreign diplomatic and consular officials; and the granting of asylum in embassies and legations.<sup>1</sup>

#### FLIGHT OF THE DIPLOMATIC CORPS TO FRANCE

At the outbreak of the hostilities many members of the diplomatic corps accredited to Madrid were summering at the resorts on the north Spanish coast. Severe fighting in the neighborhood necessitated evacuation from this area. With all roads leading to Madrid closed or cut, the Argentine, Belgian, British, Czechoslovak, French, German, Italian and Swedish envoys crossed the French border to Hendaye and St. Jean de Luz, where they immediately established official headquarters. The American Ambassador at first took refuge on board an American cutter,<sup>2</sup> and with that as his headquarters, cruised off the coast of Spain for a fortnight, thus maintaining something of the fiction of remaining within Spanish jurisdiction, or at least staying out of the jurisdiction of a third state. On August 15, 1936, however, he landed at San Sebastian and proceeded to Hendaye, where, like the others, he remained throughout the duration of the strife.

<sup>1</sup> See N. J. Padelford and H. G. Seymour, "Some International Problems of the Spanish Civil War," *Political Science Quarterly*, Sept. 1937, esp. pp. 374-379.

<sup>2</sup> *New York Times*, July 27, 1936.

Efforts were presently made by the Spanish Government to secure the return of the diplomats to Spanish jurisdiction. On August 7, 1936, they were invited to return to Madrid under a "guaranteed safe-conduct," but the invitation was rejected by all concerned.<sup>3</sup> A month later the Madrid authorities "demanded" that they return to Spanish territory if they wished to continue to be regarded by the Spanish Government as being accredited to it.<sup>4</sup> In an effort to fortify this request, the special commission given to Señor Castro, who had been sent to Hendaye to act as official liaison between the Foreign Office and the diplomatic representatives, was cancelled.<sup>5</sup> A formal reply was returned by the diplomatic corps at Hendaye stating that the several members had decided to remain abroad pending developments.<sup>6</sup> Notwithstanding the threat, the Madrid authorities continued to deal with the envoys residing across the frontier, lest failure to do so should result in a complete rupture of diplomatic relations and the probable consequent recognition of the insurgents as the *de jure* government of Spain. The embassies and legations in Madrid remained open in control of *chargés d'affaires*, through whom negotiations were conducted. Latterly, the embassies and legations in Madrid were closed, due to the siege of the city and the removal of the seat of government first to Valencia, and then to Barcelona, whence the *chargés* resorted in order to deal with the authorities, to keep watch on the progress of affairs, and to maintain contact with their nationals still remaining in Spanish republican territory.<sup>7</sup>

Safety, convenience and embarrassment largely determined the continuance of the envoys at Hendaye. Life was hardly safe in any of the major cities in the hands of the established government with the incessant bombardments by rebel aircraft and artillery, and in the presence of an armed citizenry. With the rebels in possession of the Spanish territory bordering upon Hendaye, and the republicans in possession of the Catalanian territory bordering on France, free and unobtrusive communication was obtainable from Hendaye with the capitals of both parties in Spain, a factor of much importance, which could not

<sup>3</sup> *New York Times*, Aug. 8, 1936.

<sup>4</sup> *Ibid.*, Sept. 17, 1936.

<sup>5</sup> *London Times*, Sept. 17, 1936.

<sup>6</sup> *Ibid.*, Sept. 19, 1936.

<sup>7</sup> Contact was maintained with nationals in insurgent areas through consulates remaining open there, reporting to their envoys at Hendaye.

have been easily duplicated had the envoys resided within the territory controlled by the established government. Had the envoys remained at their summer resorts, embarrassment would have been occasioned immediately upon the capture of these towns and their subjection to insurgent rule. Had the envoys been returned to the territory of republican Spain at any time after the early autumn of 1936, by which time the insurgents had obtained possession of approximately fifty per cent of the national domain, the return might easily have been construed by the insurgent authorities as an unfriendly gesture. In a few cases, this might have resulted in unhappy consequences for foreign Powers having large vested interests within the area controlled by the insurgents.

#### PRECEDENTS FOR RESIDENCE OUTSIDE OF SPAIN

There have been few situations in history comparable to this. The case is obviously not analogous to the withdrawal of diplomatic and consular officials prior to the outbreak of war. Nor is it exactly comparable to instances where legations have been established at places within a country other than at the capital, as in China; or where the members of the diplomatic corps have followed the government to which they are accredited when the latter has had to forsake the seat of government for another city owing to foreign invasion; or where one envoy is accredited to several governments, as in the case of the American minister to Roumania, Servia and Bulgaria in 1914, and resides for considerable periods of time out of one or more of the states to which he is accredited. The cases which appear to come closest to the contemporary one seem to be those which follow, in which the action taken indicates something of a precedent for what has been done with reference to Spain.

In 1795 the American Secretary of State, Mr. Randolph, wrote to the American minister in The Netherlands, apropos the disturbed conditions there, "If amidst the inevitable convulsions personal danger be apprehended, no line can be chalked out by us for your guidance, and your own judgment and discretion must decide. But, without the most unequivocal necessity, it is thought best that you should not quit the country until you shall be so instructed."<sup>8</sup>

When the Spanish King fled to Cadiz before the onslaught of the

<sup>8</sup> Moore, *Digest*, Vol. IV, p. 565.



French army in 1823, the British ambassador followed to Cadiz, and then departed for Gibraltar when Cadiz was besieged.<sup>9</sup> "Your presence at Gibraltar," wrote Secretary Canning, "places you quite as much within the reach of the Spanish Government for all purposes of active friendship and utility . . . as if you were shut up within the walls of Cadiz and exposed to the dangers and sufferings of a siege."<sup>10</sup> The British ambassador returned to Spain when the siege was lifted and the King allowed to go back to Madrid.

In December, 1886, the Bolivian Government removed its quarters from the capital, La Paz, to an interior city, Sucre. When the American minister asked the State Department whether he should repair to that location, he was told by Secretary of State Bayard that he should remain at La Paz unless the change became permanent, as the utility of diplomatic intercourse depended quite as much upon ability to communicate with his home government as with the government to which he was accredited.<sup>11</sup>

The Minister of Foreign Relations of Nicaragua, in consequence of the bombardment of Managua in 1893 by rebels, urged the American minister temporarily to remove to Granada, where the legation would not be endangered. The minister replied that his official duty required his presence in Managua, and that the government seemed able to protect the city. Acting Secretary of State Adee wrote to him that "The first test of an organized government being its ability to maintain public order at the seat of its capital, your intimation that your post of duty is at Managua was timely and proper."<sup>12</sup>

In April, 1914, the American diplomatic representatives in Mexico City severed official relations with the Huerta authorities holding that city and retired to Vera Cruz which was under the control of and subsequently occupied by the armed forces of the United States.<sup>13</sup> There part of the staff remained until after the Carranza forces took Mexico City, and expelled the Huerta Government.

Resembling somewhat the Mexican situation, but more directly analogous to the Spanish case under question, was the situation pre-

<sup>9</sup> See instructions of Secretary Canning to Sir William à Court, June 26, Aug. 19, 1823. British Archives, F. O. 72/268.

<sup>10</sup> *Ibid.*, Sept. 15, 1823.

<sup>11</sup> *U. S. For. Rels.*, 1887, p. 46.

<sup>12</sup> *U. S. For. Rels.*, 1893, p. 213.

<sup>13</sup> *Ibid.*, 1914, pp. 490-491, 636 *et seq.*

vailing with regard to Russia in 1918-1919. With the *de facto* but unrecognized Bolshevik authorities in control in Moscow and Petrograd, with uncertainty as to the protection to be afforded to the diplomatic corps by these authorities, and with the advance of the German army upon Moscow and Petrograd, the representatives of the Allied and Associated Powers withdrew from these governing cities, February 27, 1918, part of the group going to Vologda in the interior, part to Helsingfors in Finland, which by then had been severed from Russian rule, and part to Murmansk in north Russia then under Allied military occupation.<sup>14</sup> A proposal that the corps should withdraw entirely from Russian territory was rejected by all save the Roumanian minister, on the ground that such action would only open Russia the more to German influence.<sup>15</sup> Paralleling the Spanish demand that the foreign envoys return to Spanish jurisdiction, was a demand sent to the diplomatic corps in Vologda, July 11, 1918, insisting that they return to Moscow.<sup>16</sup> The demand was rejected unanimously,<sup>17</sup> and, when an attempt subsequently was made to threaten the corps into

<sup>14</sup> *Ibid.*, 1918, Russia, Vol. 1, pp. 387-389.

<sup>15</sup> *Ibid.*, p. 355.

<sup>16</sup> The note from Chicherin stated: "Taking into consideration the present situation and the possibility of danger for the Allied representatives the Soviet Government looks upon Moscow as the town where the security of the mentioned representatives can be assured. Considering it to be its duty to safeguard the Ambassadors, the Soviet Government sees in their coming to Moscow a question of necessity. We hope that the highly esteemed American Ambassador will appreciate this step in the friendly spirit in which it is undertaken. In order to execute this measure and to remove any difficulties the People's Commissariat for Foreign Affairs delegates to Vologda as its representative Citizen Radek." *Ibid.*, p. 618.

<sup>17</sup> The reply sent by the American Ambassador, dean of the diplomatic corps, was as follows: "Immediately on receiving your urgent message last midnight I called a meeting of the chiefs of Allied missions as their dean.

"I am requested by them to ask you why you think our remaining in Vologda unsafe or inadvisable. We have no fear of the Russian people, whom we have always befriended and whom we consider our Allies, and we have full confidence in the population of Vologda. Our only anxiety is concerning the forces of the Central Empires with whom we are at war, and in our judgment they are much more likely to capture Moscow than Vologda. We realize that in a country suffering as Russia is at present there are unreasonable and desperate men, but we are confident that they are not more dangerous at Vologda than elsewhere.

"At Moscow, on the other hand, we hear that the Germans have already received permission to introduce their troops to safeguard their representatives, and in any case the town is directly threatened by the Germans.

"If you mean by your message that the government of Soviets have taken, without consulting the Allied missions, the decision that the latter should come to Moscow and that you are sending Mr. Radek to carry such a decision into execution we desire to inform you that we consider that would be offensive to us, and we would not comply therewith." *Ibid.*, pp. 618-619.

returning to Moscow by sending Citizen Radek to Vologda to "execute this measure," and by stationing a Red Guard about the chancelleries and residences in Vologda and refusing to allow anyone to enter or to leave the premises, the diplomatic corps demanded transportation to Archangel and Kandalaksha, "as remaining here subjects them to be treated as hostages and possibly to violence."<sup>18</sup> Notwithstanding the fact that the latter place was occupied by armed forces of the Allied Powers, the dean of the diplomatic corps denied that in proceeding thence the envoys had any intention of quitting Russia unless forced to do so.<sup>19</sup> The envoys and their staffs remained in north Russia, under foreign occupation and an anti-Bolshevik government, until September, 1919, when, on the approach of a large Bolshevik force, both the armed forces and the diplomatic corps were evacuated entirely from Russian territory.<sup>20</sup>

One of the most ancient and settled principles of international law is that the person of a diplomatic agent is immune from local jurisdiction as well as entitled to special protection.<sup>21</sup> "The maintenance of relations between countries is primarily dependent upon the according of adequate protection to their respective nationals and to their official representatives."<sup>22</sup> The acceptance by Spain of diplomatic representatives carried with it the obligation to afford them adequate protection to their persons, and full and unfettered communication with their nationals and their home governments. When the established government became unable to provide the requisite protection,

<sup>18</sup> Radek, on arrival, wrote Ambassador Francis and the corps, "I remind (you) in a friendly way that the non-compliance with our request we will regard as an act of exceeding unfriendliness and animosity." *Ibid.*, p. 622. On July 23, Chicherin wired to leave Vologda "as tomorrow can be too late." *Ibid.*, p. 626. For decision to move and concerning movements of the diplomatic corps, see *ibid.*, pp. 622ff.; *ibid.*, Vol. II, pp. 66, 506, 512.

<sup>19</sup> *Ibid.*, Vol. I, p. 627.

<sup>20</sup> *Ibid.*, 1919, Russia, pp. 645-662. Consular officials and various remaining attachés of the Allied Powers had left Bolshevik territory Sept., 1918, following a series of unlawful incidents including forcible invasions of the consulates and legations, arrests and murders of consuls and attachés of several states and the suppression of free communications with foreign states. *Ibid.*, 1918, Russia, Vol. I, p. 643 *et seq.*

<sup>21</sup> E. Satow, *A Guide to Diplomatic Practice* (London, 1922, 2d ed.), Vol. I, p. 251; R. Genet, *Traité de diplomatie et de droit diplomatique* (Paris, 1931), Vol. I, p. 487; Harvard Law School Research in International Law, *Draft Convention on Diplomatic Privileges and Immunities*, Article 17, *A.J.I.L., Supplement*, Vol. XXVI (1932), pp. 90-97; Moore, *Digest*, Vol. IV, p. 622.

<sup>22</sup> Statement of the United States Government in the case of an American vice-consul murdered by a Persian mob in 1924. E. C. Stowell, "The Imbrie Incident," *A.J.I.L.*, Vol. XVIII (1924), p. 770.

and when it became unable or indisposed to give them adequate facilities for communication,<sup>23</sup> the envoys were undoubtedly justified in seeking refuge at places removed from the seat of the government, and outside of the country if necessary for their personal safety. To be sure, removal from the country was an extraordinary procedure; but so was the situation prevailing within the national domain. "The continued residence of an embassy, is, to speak strictly, a matter of comity, and not of strict right," according to Sir Ernest Satow.<sup>24</sup> There is no principle of international law which would require foreign diplomats to remain within Spain under the circumstances, and which would appear to rule against the course of action which was taken. Certainly there was nothing in Spanish law which could require their continued presence.<sup>25</sup> So long as the legations and embassies remained open for business in Spain, and in the hands of proper *chargés d'affaires*, there would appear to be nothing unduly irregular in the procedure.

#### PRIVILEGES AND ACTIVITIES IN FRANCE

No formal agreement is known to have been made by the French Government with the various foreign governments concerning the rights and privileges of the envoys resident in France but accredited to and dealing with the Spanish authorities. As a matter of fact, questions of "rights," *per se*, appear to have been avoided as carefully as possible, and the whole matter allowed to develop with sufferance and comity.

Three rather distinct schools of thought are to be found among the commentators on the general problem of the rights and privileges of diplomatic representatives traveling through or temporarily sojourning in third states. One group of writers take a cautious and restrictive point of view, holding that they are to be given the minimum of privileges and that they are rather completely subject to the jurisdiction of the state in which they happen to be present.<sup>26</sup> A second group of

<sup>23</sup> See statement of Prime Minister Baldwin in House of Commons, Oct. 29, 1936. *London Times*, Oct. 30, 1936.

<sup>24</sup> Satow, *op. cit.*, Vol. I, p. 195; Phillimore, *International Law*, Vol. II, p. 175; H. Wheaton, *Elements*, Vol. I, p. 258; Vattel, *Law of Nations*, Book IV, Ch. 5, p. 456.

<sup>25</sup> A. Feller and M. O. Hudson, *Diplomatic and Consular Laws and Regulations* (Washington, 1933), Vol. II, pp. 1111-1132.

<sup>26</sup> J. Westlake, *International Law* (Cambridge, 1910), Pt. I, p. 264; Hall, *International Law*, pp. 363-364. The *Draft Convention on Diplomatic Privileges and Immunities* of the Research in International Law of the Harvard Law School, Article 15, adopts the restrictive view. See also Carbone v. Carbone, *Annual Digest of Public International Law Cases*, 1923-1924, pp. 300-301.

writers adopt a more generous attitude, although asserting that the privileges which they must be accorded are dependent upon custom and usage rather than upon legal right.<sup>27</sup> The third body of writers, of which the eminent French scholar Fauchille is the leading exponent, take the position that the third state is under legal obligation to accord the transient or sojourning diplomatic representative the same inviolability and rights given to the officials accredited to itself as soon as the government becomes aware of the presence of a foreign diplomatic representative.<sup>28</sup> It is worth noting that this latter stand has been adopted heretofore by the French Foreign Ministry.<sup>29</sup>

The diplomats at Hendaye and St. Jean de Luz were given ample facilities for their residence and for the performance of their normal duties, both by the French Government and by the local authorities. They were given the privilege of indefinite residence, with inviolability of person, suite, and quarters. They were exempted from all personal and property taxes, and from customs duties on articles imported from abroad. They were given the same freedom, priority and inviolability of communication and correspondence with their home governments (including the use of direct diplomatic pouch) as that accorded to representatives officially accredited to the Government of France. In addition they were given unrestricted facilities for communication and correspondence with both parties and areas in Spain. They were allowed to perform official acts and functions connected with their normal diplomatic duties in Spain in the same manner as if they were actually residing in Spain.<sup>30</sup> In short, a virtual status of extra-territoriality was created. Considering the extended length of time during which the residence and activities continued,

<sup>27</sup> A. Rivier, *Principes du droit des gens* (Paris, 1896), Vol. I, p. 509; Satow, *op. cit.*, Vol. I, p. 330; Wheaton, *Elements*, Vol. I, p. 269; Vattel, *op. cit.*, Book IV, Chap. 7, p. 466; Calvo, *Le droit international*, Vol. III, sec. 1352.

<sup>28</sup> P. Fauchille, *Traité de droit international public* (8th ed., Paris, 1922), Pt. III, Vol. I, sec. 689. See also Article 23 of the Convention on Diplomatic Officers adopted at Havana, Feb. 20, 1928, *A.J.I.L.*, Supplement, Vol. XXVI (1932), p. 177; Article 5 of the Resolution relating to Diplomatic Immunities adopted by the Institute of International Law in 1929, *ibid.*, p. 186.

<sup>29</sup> In 1900 when a case arose concerning a Spanish envoy to Berlin, temporarily sojourning at Paris, the French Foreign Minister declared that "the diplomatic agent who traverses French territory to accomplish his mission to a foreign state or who is returning to render an account to his government, must be assimilated to the accredited diplomatic agent and consequently must be exempted from local jurisdiction." Fauchille, *op. cit.*, Pt. III, Vol. I, sec. 702/1.

<sup>30</sup> For laws of France relating to foreign diplomatic representatives within the Republic, see Feller and Hudson, *op. cit.*, Vol. I, pp. 536-543.

a unique precedent appears to have been established. Certainly the French Government performed not only a magnanimous but a highly valuable service to all of the states whose representatives to Spain took refuge within her borders.

#### THE CASE OF BARON DE BORCHGRAVE

Closely related to the problems which have just been discussed was the assassination of Baron Jacques de Borchgrave, first secretary of the Belgian legation in Madrid. On January 8, 1937, Belgium served an ultimatum upon the Spanish Government, giving it forty-eight hours in which to pay military honors to Borchgrave's body. Belgium also demanded an apology, punishment of the culprits, and one million francs indemnity. It stated that if its demands were not complied with, diplomatic relations would be severed and the case submitted to the Permanent Court at The Hague.<sup>31</sup> On February 3, the Spanish Government informed Belgium that it was ready to deposit one million francs as compensation for the death of Baron Borchgrave, but it asked that the case be referred to the Permanent Court of International Justice at The Hague, and that, pending a decision by the Court, no change be made in the diplomatic relations of Belgium and Spain.<sup>32</sup> This was accepted by Belgium, and on February 20, 1937, the two governments concluded a Special Agreement for the submission of the case. The text of this Agreement was as follows:

The Belgian Government and the Government of the Spanish Republic,  
A controversy having arisen between them apropos the death of Baron Jacques de Borchgrave;

Having reached agreement to submit the dispute, by means of a Special Agreement, to the decision of the Permanent Court of International Justice in accordance with Articles 36 and 40 of the Court's Statute and Article 35 of the Rules of Court;

For this purpose . . . have agreed as follows:

*Article 1.* The Permanent Court of International Justice is requested to say whether, having regard to the circumstances of fact and of law concerning the case, the responsibility of the Spanish Government is involved.

*Article 2.* The present Agreement shall take effect on the date of signature and may be notified to the Registrar of the Court by either of the contracting Governments.<sup>33</sup>

<sup>31</sup> *Le Temps*, Jan. 9, 1937.

<sup>32</sup> *Bulletin of International News*, No. 17, p. 31.

<sup>33</sup> *Publications of the Court*, Series A/B, No. 72, p. 159.

In its Memorial, the Belgian Government asked the Court:

To adjudge and declare that the responsibility of the Spanish Government is involved on account of the crime committed on the person of Baron Jacques de Borchgrave;

To adjudge and declare that the Spanish Government is responsible for not having used sufficient diligence in the apprehension and prosecution of the guilty.<sup>34</sup>

In its Counter-Memorial, the Spanish Government requested the Court:

To declare that it has no jurisdiction to examine or adjudicate upon the question of the responsibility imputed to the Spanish Government in the second submission of the Memorial of the Belgian Government, concerning the Spanish Government's alleged lack of diligence in the apprehension and prosecution of the guilty.

To declare that the Belgian Government's claim cannot be entertained in regard either to the first or to the second of the submissions contained in its Memorial, owing to the fact that the remedies afforded by Spanish municipal law have not been exhausted.<sup>35</sup>

In reply, the Belgian Government requested the Court to adjudge and to declare that the Spanish objections were ill-founded, or to join the objection to the merits of the case. The basic issue presented to the Court related to the interpretation of the Special Agreement, whether it permitted bringing in the question of lack of diligence in apprehending and prosecuting the persons guilty of causing the death of Baron de Borchgrave.<sup>36</sup> The Court reached the conclusion that nothing in the Agreement limited the scope of the Court's jurisdiction over the case, and that it embraced both the legal responsibility of the Spanish Government in connection with the fact of the death of the diplomat and in connection with the measures taken for the apprehension and punishment after the deed.<sup>37</sup> The Court took note of the fact that from an early point in the negotiations between the two Governments, the Belgian Government had demanded prompt investigation and action, and had consistently complained of delay and evasion.

The Court issued an Order on November 6, 1937, fixing dates for the submission of the proper documents on the merits of the case,<sup>38</sup>

<sup>34</sup> *Ibid.*, p. 160.

<sup>35</sup> *Ibid.*, p. 160.

<sup>36</sup> *Ibid.*, p. 163.

<sup>37</sup> *Ibid.*, p. 167.

<sup>38</sup> *Ibid.*, pp. 172-173.

but the case never came to argument or decision, as the Belgian Government informed the Court on January 6, 1938, that it dropped the matter as a result of the reaching of an understanding out of court whereby the Spanish Government paid over the indemnity and satisfactorily explained the incident.<sup>39</sup>

On general principles on the merit of the case it must be said that the circumstances under which Baron de Borchgrave disappeared, and under which the Spanish authorities delayed in giving satisfactory explanations to the Belgian Government indicated complicity in the murder, denial of justice, and hence violation of international law. The murder of a diplomat by forces subject to the control of the government to which he is accredited, no matter what his actions may be, is without question contrary to the fundamental principles of international law regarding the inviolability and immunity of diplomatic representatives, and is a violation of Spanish law as well.<sup>40</sup>

#### SEARCH OF THE PERSON OF THE CHILEAN AMBASSADOR

A somewhat different problem arose in connection with the ambassador from Chile. He was asked to leave Spain as *persona non grata* because he was reported to have harbored a large number of political refugees at Madrid (estimated at 1000),<sup>41</sup> and to have exported, under diplomatic protection, Spanish funds not supposed to be taken out of the country. On leaving Spain the ambassador was stopped at the frontier, and, according to reports, his person and baggage were subjected to a violent search, which revealed quantities of money which the government maintained he was endeavoring to smuggle unlawfully out of the country. The Chilean Government protested, as did the diplomatic corps, but the Spanish Government replied that it had fully respected diplomatic usage.<sup>42</sup>

It must be held that the Spanish Government contravened interna-

<sup>39</sup> *New York Times*, Jan. 7, 1938. The Court issued an Order on April 30, 1938, removing the case from its docket, *P.C.I.J.*, Series A/B, No. 73.

<sup>40</sup> Article 242 of the Penal Code of Sept. 8, 1928. Feller and Hudson, *op. cit.*, Vol. II, p. 1125.

<sup>41</sup> *New York Times*, Jan. 18, 1937. There is little question that privileges and rights had been abused. Not only were political refugees housed within the Embassy, but several large buildings were rented in the city which also were filled with refugees. Inviolability was demanded for these buildings; the names of those given asylum were refused to the authorities, and no or few restraints were placed upon the inmates engaging in political activities from their sanctuary.

<sup>42</sup> *Ibid.* April 24.



tional law in searching the person of the Chilean ambassador. The rule of inviolability of the person of a diplomatic agent is based not on treaty or national law, but on international law. Nevertheless, in the case of Spain, the searching of the ambassador was a violation of the penal law of the state as well.<sup>43</sup> The search of his baggage, however, comes under a different rule. Exemption from customs examination and duties is based on courtesy alone, not on international law.<sup>44</sup> Of course, the privilege may be based on a treaty, but the Treaty of 1883 between Spain and Chile only provides that "the Governments of Chile and Spain shall appoint Diplomatic Representatives as well as Consular Agents." Nothing is stated regarding privileges or immunities.<sup>45</sup> Accordingly, it may be said that while exceeding custom, the Spanish Government committed no breach of law in searching the baggage.<sup>45a</sup>

#### INJURIES SUSTAINED BY FOREIGN CONSULS

Several cases of injury to foreign consuls were reported, though hardly enough is known about any of them to discuss them intelligently.<sup>46</sup> The Treaty of Friendship and General Relations of 1902 between the United States and Spain provides that most favored nation treatment is extended to consuls-general, consuls, vice-consuls and consular agents, "as likewise the Consular Chancellors, Secretaries, or Clerks of the High Contracting Parties."<sup>47</sup> By international law a person officially engaged in consular functions and recog-

<sup>43</sup> Article 239 of the Penal Code of Sept. 8, 1928, Feller and Hudson, *op. cit.*, Vol. II, p. 1125.

<sup>44</sup> Hall, *op. cit.*, p. 235; Satow, *op. cit.*, p. 212; Oppenheim, *op. cit.*, Vol. I, p. 635; Fauchille, *op. cit.*, Vol. III, p. 100; Genet, *op. cit.*, Vol. I, pp. 436-437.

<sup>45</sup> *British & Foreign State Papers*, Vol. LXXIV, p. 721.

<sup>45a</sup> Rousseau cites another instance of maltreatment of the person of a diplomat involving the Italian ambassador at Irun. "La Non-Intervention en Espagne," *op. cit.*, p. 252.

<sup>46</sup> (1) Spaniard employed as clerk in the United States consulate killed while on an official errand in a consular car. Madrid immediately expressed regret and offered its apologies on the next day. The United States paid the funeral expenses and offered an annuity to the family. *New York Times*, July 26, 1936. (2) Poland demanded reparation, punishment and apology for a consul arrested and shot down in Valencia. *Ibid.*, Aug. 22, 1936. (3) The Uruguayan consul at Majorca, who was also a Socialist deputy in the Cortes, was executed by the insurgents. He was a native of Uruguay, but a citizen of Spain. *Ibid.*, March 17, 1937. Rousseau states that Austrian and Paraguayan consular officers were executed at Bilbao. "La Non-Intervention en Espagne," *op. cit.*, p. 252.

<sup>47</sup> W. M. Malloy, *Treaties, Conventions*, etc. (Washington, 1910), Vol. I, p. 1710.

nized as possessing a consular status is entitled to protection, at least to the extent strictly necessary to the fulfillment of his duties.<sup>48</sup>

Sufficient facts are lacking in the case of the Polish consul who was shot to know whether he was a Spaniard holding the position of honorary consul, a Pole holding the same position, or a *bona fide* Polish career consul. In any case he was entitled to protection sufficient for the fulfillment of his duties unless he was a Spaniard engaged in political activities or violating municipal law. The nature of the Polish demands would seem to indicate that he was a Polish national, and that the case was one of unprovoked murder. In such a case, of course, the Madrid Government would be liable for compensation.

The Uruguayan consul executed by the insurgents occupied a very curious legal position. By a Spanish decree of June 19, 1931, ex-equaturs or authorizations for the exercise of consular functions may not be issued "to representatives of the nation in the Cortes during their term of office, it being understood that if an honorary consul of a foreign country is elected representative to the Cortes, his consular functions shall cease *ipso facto*."<sup>49</sup> The Uruguayan consul was apparently at the time a representative in the Cortes, and thereby legally lost his consular character. Since he was a Spanish citizen as well as a Uruguayan, the Uruguayan Government would have no grounds for protesting in his case. If anyone were to be held liable for his death, it would be the insurgent authorities, not the legitimate government, which would not be liable for acts performed in insurgent territory by insurgent authorities, unless it had failed to show due diligence in preventing or suppressing the insurrection.<sup>50</sup>

<sup>48</sup> Oppenheim, *op. cit.*, Vol. I, p. 664; J. I. Puente, *The Foreign Consul* (Chicago, 1926), p. 42; Hall, *op. cit.*, p. 375; Hyde, *International Law*, Vol. I, p. 797; *Draft Convention on the Legal Position and Functions of Consuls* of the Research in International Law, *A.J.I.L.*, Supplement, Vol. XXVI (1932), pp. 313-317; Irvin Stewart, *Consular Privileges and Immunities* (New York, 1926), pp. 14-15; L. Buffanais, *Les Consuls en temps de guerre et de troubles* (Paris, 1933), p. 196; E. M. Borchard, *Diplomatic Protection of Citizens Abroad* (New York, 1927), p. 223; Fauchille, *op. cit.*, Pt. III, Vol. I, p. 127; F. K. Nielsen, *International Law Applied to Reclamations* (Washington, 1933), p. 31.

<sup>49</sup> Feller and Hudson, *op. cit.*, Vol. II, pp. 1126-1127.

<sup>50</sup> Borchard, *op. cit.*, p. 229; Calvo, *op. cit.*, Vol. III, p. 142; Fauchille, *op. cit.*, Pt. I, Vol. I, p. 308; Hyde, *op. cit.*, Vol. I, p. 538; Moore, *Digest*, Vol. VII, p. 957; Nielsen, *op. cit.*, p. 51; A. Rougier, *Les guerres civiles et le droit des gens*, p. 448; C. Weisse, *Le droit international appliqué aux guerres civiles*, p. 42.

## THE PROBLEM OF ASYLUM

Throughout the war controversy prevailed over the right and the practice of granting asylum in the foreign embassies and legations located at Madrid. The United States and Great Britain provided refuge only for non-Spanish persons, and avoided the more contentious practice of affording asylum to political refugees of Spanish nationality. Although some difficulty was experienced in the first three months of the strife in obtaining the necessary railway and safe transit facilities even for the evacuation of foreign citizens from Madrid to the Mediterranean seaboard, these were obtained at length, and, by November, 1936, the larger part of the foreign group had been taken out of Spain, through the coöperation of numerous public and private agencies of various countries.

The Latin American states, together with a few European states, notably The Netherlands and Poland, extended asylum to Spanish political refugees, amassing a vast number of them, at one time estimated to be in excess of five thousand, in cramped legation and rented quarters totally unsuited to such a purpose. Leadership in the controversy with the Spanish Government was assumed by the Argentine<sup>51</sup> and Chilean Governments, the chief representative of the latter at Madrid being *doyen* of the diplomatic corps remaining at that city. Early in August, 1936, the Argentine Government demanded that Madrid recognize the right of political asylum, and provide a safe-conduct for Spanish refugees desiring to go to France. When the government at Madrid refused both demands, the largest warship of the Argentine Republic was dispatched to Spain.<sup>52</sup> Thereupon the Spaniards capitulated momentarily, agreeing to provide an armed guard and a guarantee of safety to the French frontier for a given group of those sheltered in the Argentine embassy, but reserving the general question regarding the right of asylum.<sup>53</sup> Extended refusal on the part of Spain to recognize either the right of asylum or to aid in the safe evacuation of other refugees led to the convocation of a special conference at Buenos Aires, October 19, 1936, for the consideration

<sup>51</sup> The view of the Argentine Government is set forth in the annex to the "Proyecto de Convención sobre Derecho de Asilo," circulated by the Argentine Foreign Office in July, 1937. See Appendix XIII.

<sup>52</sup> *New York Times*, Aug. 10, 1936.

<sup>53</sup> *Ibid.*, Aug. 11, 1936.

of measures to compel the acquiescence and coöperation of Madrid.<sup>54</sup> A joint note was sent to Spain pointing to the conventional law of the South American states authorizing the granting of asylum in legations, embodied in Articles 16 and 17 of the Treaty on International Penal Law of 1889,<sup>55</sup> and demanding that Spain accept their practice and law. The officials in Madrid agreed in principle to respect the practice and to negotiate for the evacuation of refugees.<sup>56</sup>

The waywardness of the Spanish authorities in getting down to realities in the ensuing negotiations may well have been partly responsible for the opposition of Señor Edwards of Chile, President of the Council of the League of Nations, to the convening of the Council in special session in December, 1936, to consider the Spanish appeal against foreign intervention.<sup>57</sup> Although the question of asylum was not on the agenda of the Council, the Chilean and Bolivian delegates discussed it in the course of their remarks upon the Spanish appeal, both asserting that a legal right to grant asylum existed under international law, in the Americas, on the basis of the Havana and Montevideo conventions, and in Spain on the ground of practice.<sup>58</sup> Señor del Vayo expressed appreciation for these sentiments, and stated that his Government was prepared to examine the matter directly with each government.<sup>59</sup> This marked no great advance toward the settlement of the controversy, save that it laid the issue open publicly and placed the Spanish avowal in the records of the League.

Procrastination continuing to characterize the activities of the Loyalist authorities, the diplomatic corps at Madrid addressed a request to the Council, through the Chilean Government, coincidental with the departure from Spain of the League Health Mission which had cursorily investigated the refugee problem, asking that the "situation of Persons who have taken asylum in the Embassies and Legations at Madrid" be placed on the agenda of the next session of the Coun-

<sup>54</sup> *Ibid.*, Oct. 20, 1936. The report did not mention all of the states represented. It may be presumed that Bolivia, Cuba, Chile, Haiti, Mexico, Panama, Peru, and the Dominican Republic, all of which provided asylum for Spaniards in their diplomatic quarters, were at least invited if not present. See *Proyecto de Convención sobre Derecho de Asilo* (Buenos Aires, 1937), p. 8.

<sup>55</sup> Martens, *Nouveau Recueil*, 2° ser., Vol. XVIII, pp. 346, 356, 435.

<sup>56</sup> *New York Times*, Oct. 24, 1936.

<sup>57</sup> See Chapter IV, p. 124; League of Nations, *Official Journal*, Jan. 1937, p. 35.

<sup>58</sup> League of Nations, *Official Journal*, *op. cit.*, pp. 19-20.

<sup>59</sup> *Ibid.*, p. 21.

cil.<sup>60</sup> After some altercation relative to the inclusion of the item on the agenda, and the precise form of statement which this should take, the Council agreed to take it up in connection with and as part of its consideration of the Report of the Health Mission.<sup>61</sup> In arguing for Spanish acceptance of the right of asylum, Señor Edwards of Chile pointed to the fact that fifteen states were granting asylum to Spaniards, that asylum was the custom and rule among the Latin American countries, being provided for in conventions in 1889, 1928, and 1933, that during revolutions in the nineteenth and twentieth centuries in Spain itself, the practice of granting asylum had been common and regular, and that Spain itself had granted asylum in its embassies and legations in the Latin American states. The establishment of a League Commission to be sent to Spain to supervise the evacuation of refugees was proposed.<sup>62</sup> The Spanish delegate replied that Spain was not bound by the Pan-American treaties, but nevertheless "the Spanish Government had recognized the right of asylum in practice." It was asserted that negotiations were proceeding with several governments, and repeated that the Spanish Government was prepared to negotiate separately with the states concerned. The plan for a League Commission, or for any form of League intervention in Spain, was flatly rejected.<sup>63</sup> After extended negotiations between the Chilean and Spanish delegates outside of the Council session, under the mediation of the Chinese and other foreign delegates, the Spanish and Chilean delegates announced their agreement to commence formal negotiation within a stated time in the city of London regarding the evacuation of refugees from the Chilean embassy in Madrid, and this was taken note of by the Council in its approval of the Health Mission's Report.

Following the League meeting, and doubtless due in considerable measure to its influence, agreements were concluded for the evacuation of part of the refugees in various legations, particularly the Chilean, Argentinean, Polish, and The Netherlands.<sup>64</sup>

Before passing to a discussion of the draft convention on asylum drawn up by the Argentine Foreign Minister, Dr. Saavedra Lamas,

<sup>60</sup> *Ibid.*, Feb. 1937, pp. 98, 135-136.

<sup>61</sup> *Ibid.*, p. 69.

<sup>62</sup> *Ibid.*, pp. 96-100.

<sup>63</sup> *Ibid.*, pp. 101-102.

<sup>64</sup> *New York Times*, Feb. 21, March 4, March 31, April 15, 1937.

and circulated to all governments in the summer of 1937, it may be well to review the practice and law relating to asylum.

Sir Ernest Satow in his treatise on *Diplomatic Practice* says that it is an established doctrine in Europe that political refugees shall not be harbored in legations in time of strife; in Spain and in South America, on the other hand, it has been customary to grant shelter to such persons.<sup>65</sup> These conclusions are substantiated and upheld by leading authorities on international law.<sup>66</sup> Statesmen and lawyers have maintained that the fiction of the extraterritoriality of embassies, as an explanation of diplomatic inviolability, has confused the subject, and that, legally speaking, inviolability attaches under international law only to the ambassador, his suite, and the embassy buildings for the execution of the function of the mission.

On strictly humanitarian, in contrast with legal, grounds, governments and leading authorities agree that emergencies may arise, justifying the giving of temporary shelter to one whose life is in imminent danger because of his political convictions or affiliations.<sup>67</sup> The comment in the *Draft Convention on Diplomatic Privileges and Immunities* of the Research in International Law of the Harvard Law School is particularly apt. "Although no legal right of asylum is held to exist, it is believed, nevertheless, that states are not yet prepared to assent to the entire abolition of the practice in those parts of the world in which its maintenance appears still to be justified upon humanitarian grounds." The humanitarian motive was not absent in the debate on the Spanish situation during 1936 and 1937.

<sup>65</sup> Satow, *op. cit.*, sections 330-338.

<sup>66</sup> Hall, *op. cit.*, pp. 233-234; Westlake, *op. cit.*, Vol. I, pp. 271-272; Oppenheim, *op. cit.*, Vol. I, p. 462; Vattel, *op. cit.*, Book IV, Chap. IX, sec. 118; Phillimore, *op. cit.*, Vol. II, secs. 204-205; Moore, *Digest*, Vol. II, secs. 294-305; Fauchille, *op. cit.*, Pt. III, Vol. I, sec. 698. Calvo adopts a somewhat more liberal stand in his *op. cit.* Vol. III, sec. 1521. See also the Draft Convention on Asylum, Commission of Jurists, Rio, 1927, *A.J.I.L.*, Supplement No. 1, Vol. XXII (1928), pp. 265-266. The United States Government has taken the stricter view that international law does not require that asylum be given. *U. S. Instructions to Diplomatic Officers*, Chap. VII, secs. 5-6. See also Article 6 of the *Draft Convention on Diplomatic Privileges and Immunities* of the Research in International Law, *A.J.I.L.*, Vol. XXVI (1932), Supplement, pp. 62-66; Hyde, *op. cit.*, Vol. I, pp. 760-763.

<sup>67</sup> See *Draft Convention on Diplomatic Immunities and Privileges* of the Research in International Law, *A.J.I.L.*, Vol. XXVI (1932), Supplement, p. 65; Calvo, *op. cit.*, Vol. III, sec. 1521; Fauchille, *op. cit.*, Vol. I, Pt. III, pp. 78-79; Genet, *op. cit.*, Vol. I, pp. 552-554; *U. S. Instructions to Diplomatic Officers*, sec. 6.

Among all the countries of Europe, Spain was virtually the only one in which asylum was accorded to political refugees in foreign embassies during the nineteenth century. Owing to the frequency and severity of the revolutions in Spain it was practiced on a large scale in 1841, 1843, 1848, 1873, 1875-76. So extensive was the asylum given by the Danish Legation to the rebels in 1841, that the title of "*Baron del Asilo*" was officially conferred on the chief of the mission when those who had been sheltered came into power in 1846.<sup>68</sup> It may be recalled that one of the grounds upon which the Spanish Government sought the withdrawal of the British ambassador, Mr. Bulwer, in 1848, was that of abusing the right of asylum by sheltering conspirators against the government. May 3, 1848, Mr. Bulwer, writing to Mr. Palmerston, remarked that "at all times Foreign Missions have been considered in this country as places of refuge," and since 1841, asylum therein has been regarded by the Spanish Government as an "obligation."<sup>69</sup> Mr. Palmerston, writing to the Spanish ambassador in London, asserted that the British ambassador had done his best to prevent the hatching of political conspiracies from within the embassy. Mr. Palmerston admitted that the British Government was ready to acknowledge that the practice of asylum was objectionable in principle but that so long as it existed in practice, Britain would uphold it.<sup>70</sup> Notwithstanding the dismissal of Mr. Bulwer, the Spanish Government did not deny the practice or the right of asylum, but contented itself with observing that the custom had its limits. In 1873 the British minister gave shelter to and facilitated the safe passage out of the country of one of the chief supporters of the deposed ruler.<sup>71</sup> In October, 1875, the American legation was called upon to provide asylum, and, while the Secretary of State, Mr. Fish, deplored and objected to the practice, he allowed the American minister to use his discretion in granting refuge. His letter to Mr. Cushing throws a great deal of light upon the Spanish and upon the American attitudes toward the question of asylum:

<sup>68</sup> Satow, *op. cit.*, Vol. I, p. 302.

<sup>69</sup> The correspondence relative to the Bulwer case may be found in the British Archives, F. O. 72/739 (Palmerston to Bulwer), 72/740 and 741 (Bulwer to the Foreign Office). Part of the correspondence may be found in *Br. & For. St. Pap.*, Vol. XXXVIII, p. 928 *et seq.*

<sup>70</sup> Palmerston to M. Isturiz, June 12, 1848. *Br. & For. St. Pap.*, Vol. XXXVIII, pp. 1043, 1047-48.

<sup>71</sup> *Annual Register*, 1873, p. 226.

The frequency of resort in Spain to the legations for refuge, and the fact mentioned by you that nobody there disputes the claim of asylum, but that it has become, as it were, *the common law of the land*, may be accounted for by the prevalence of 'conspiracy as a means of changing a cabinet or a government,' and the continued tolerance of the usage is an encouragement to this tendency to conspiracy.

It is an annoyance and embarrassment, probably, to the ministers whose legations are thus used, but certainly to the governments of those ministers, and, as facilitating and encouraging chronic conspiracy and rebellion, it is wrong to the government and to the people where it is practiced. . . .<sup>72</sup>

So far as can be ascertained from a careful search through treaty collections, Spain has signed no treaty since the beginning of the nineteenth century containing any clause directly authorizing foreign legations in Spain, or Spanish legations abroad, to grant asylum to political fugitives. In the latter part of the last century, Spain concluded treaties with Colombia, Ecuador, Honduras, and Peru containing provisions referring to civil wars and to the status of their respective subjects in territories undergoing such strife.<sup>73</sup> Offhand

<sup>72</sup> Department of State, MS. Inst. Spain, Vol. XVII, p. 317. Italics inserted by author.

<sup>73</sup> These interesting and novel articles were as follows:

"III. In case a Spaniard in Colombia or a Colombian in Spain should take part in any internal question or in the civil struggles of either of the two countries, he shall be treated, judged, and, if there be sufficient evidence, condemned by the same procedure, formalities or Tribunals as natives in similar circumstances.

"IV. The two Governments cannot reciprocally exact responsibility for damages, vexations or exactions which the natives of either of the two States may suffer within the territory of the other on the part of insurgents, in time of insurrection or civil war or through sedition or riots, or on the part of savage tribes or hordes beyond the control of the Government, excepting it be through the fault or want of vigilance of the authorities of the country, so declared by the Tribunals of the same country. The Spanish and Colombian Governments shall not, therefore, be held reciprocally responsible except for their own acts or the acts performed by their Agents in the exercise of their functions. It is understood, nevertheless, that both Colombians and Spaniards are entitled to the equitable compensation or most favourable remuneration the respective Governments may concede to their own subjects or to aliens in said circumstances.

"V. If a Spaniard in Colombia or a Colombian in Spain should take part in sedition, rebellion or civil war, if he should usurp political rights, or fill any such office, employment or function as carries with it a political authority or jurisdiction, he will lose the right to all exemptions and privileges of alienage which Treaties or international law may confer upon him, and be placed on the same footing as the natives in all that concerns the responsibility for his acts.

"VI. Spaniards in Colombia and Colombians in Spain shall enjoy the same civil rights as citizens or subjects of the country, and the penal laws enacted for police purposes or for the public safety will be binding upon them. In either case, their goods, rights, penal responsibilities and civil actions will be protected, recognized or qualified by the same competent judicial and administrative authorities who protect, recognize



these provisions, which carry the Calvo doctrine to an extreme, seem to deprive Colombians in Spain, for example, of the right of asylum in the Colombian legation in time of insurrection. It is believed, however, that such a far-reaching interpretation was not sought by the signatories. No mention or prohibition being made of asylum, it may be presumed that in view of the long-standing practice of asylum in Hispanic lands, it was not contemplated that the granting of asylum was precluded. Certainly nothing in the texts of the treaties forbade the affording of refuge in the Colombian legation to Spanish political refugees. Nor did anything denounce the practice in such a way as to estop either Spaniards or Colombians taking asylum in the legations of third states, or the nationals of third states taking refuge in the Colombian legation. The general purport of the treaties seems to have been directed toward the legal subjugation of the subjects of the signatories to each other's national jurisdiction. Should a Spaniard seek shelter in the Colombian legation at Madrid, nothing in the treaty enlarged the right of Spain in the procedural steps necessary to obtain possession of the person sought. The refugee would be obtainable only upon request to the proper Colombian authorities, and upon the willingness of the latter to authorize his relinquishment. To be sure, the treaty established the *caveat* that the subjects of both signatories were legally to be subordinated to the courts and authorities of the territorial sovereign, thereby giving a preferential legal basis to the demanding state.

Treaties of this description are not known to have been made with the states most actively concerned with the refugee question in 1936-1938, to wit, Argentina, Bolivia, Chile, The Netherlands, Poland, and others. Therefore, the matter is governed by the more general principles of law and practice.

Among the South American states there long has been a disposition to bring the problem within the confines of conventional law. In 1888 a conference on Private International Law was assembled at Monte-

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or qualify those of the natives. . . . Spaniards in Colombia and Colombians in Spain shall have no right to diplomatic intervention except in the case of a manifest denial of justice, or refusal or negligence in the administration of justice." (Text of the Peruvian treaty of July 16, 1887, in Martens, *Nouveau Recueil Général*, 2<sup>e</sup> ser., Vol. XXXII, pp. 69-70; Colombian Treaty of April 28, 1894, *ibid.*, 2<sup>e</sup> ser., Vol. XXXIII, pp. 575-576; Ecuador Treaty of May 23, 1888, *ibid.*, 3<sup>e</sup> ser., Vol. VI, pp. 678-680; Honduras Treaty of Aug. 23, 1895, *ibid.*, 3<sup>e</sup> ser., Vol. VII, pp. 422-423.

video which resulted in the adoption of a convention on International Penal Law ratified by Argentina, Bolivia, Paraguay, Peru and Uruguay, but not by the other participant, Chile.<sup>74</sup> Article 17 of this Convention sanctioned asylum in legations, provided the chief of the mission immediately informed the government of the state to which he was accredited of the fact. It also stipulated that this government might demand that the refugee be sent out of the national domain forthwith, upon the giving of guarantees of safe-transit and inviolability of the person or persons departing. A Convention on Asylum was drafted and adopted at the Pan-American Congress at Havana in 1928.<sup>75</sup> Ratified by thirteen Latin American states, but not including Argentina, Bolivia, or Chile, this Convention followed the same general principles embodied in that of 1889. It based the granting of asylum on the broad foundation that it should be "respected to the extent in which allowed, as a right or through humanitarian toleration, by the usages, the conventions or the laws of the country in which granted." It emphasized the temporary character of asylum, and, like its predecessor, stated that the act should be reported to the territorial authorities, and the person sent out of the country under guarantees of safe-conduct, if so demanded. Another convention, but of a considerably different bearing, was signed at the Pan-American Congress held at Montevideo in 1933.<sup>76</sup> According to this later convention, persons accused of "common offences," which were left undefined, were to be denied asylum. "The judgment of political delinquency," whatever the latter might conceivably mean and involve, was left by Article 2 to the "state" (meaning, it is supposed, the embassy) offering asylum. Article 3 was likewise couched in abstruse, contradictory, and indeterminate language, leaving its meaning hopelessly beclouded:

Political asylum, as an institution of humanitarian character, is not subject to reciprocity. Any man may resort to its protection whatever his nationality, without prejudice to the obligations accepted by the state to which he belongs; however, the states that do not recognize political asylum, except with limitations and peculiarities, can exercise it in foreign countries only in the manner and within the limits recognized by said countries.

<sup>74</sup> Martens, *op. cit.*, 2° ser., Vol. XVIII, p. 432 *et. seq.*

<sup>75</sup> Text in Hudson, *International Legislation*, Vol. IV, pp. 2412-2415.

<sup>76</sup> Text in *U. S. Treaty Information Bulletin*, No. 55, April 30, 1934, p. 21.

It is impossible to tell what the status of asylum is where it is regarded as a *legal institution* by the laws and treaties of some states, or what is inferred by the employment of the terms "not subject to reciprocity." It is implied that asylum may be demanded and obtained regardless of the will of the embassy applied to or the policy of the state which it represents. It is also implied that if a country like the United States ordinarily opposes or places limitations upon its diplomatic officers in their granting of asylum, it must accept an inferior and unequal position in the state in which the application is made, and that it may not at its own discretion revise its policy. Notwithstanding the characteristics of this instrument, it has been ratified by nine Latin American states, including Brazil and Chile but not the Argentine.

#### THE ARGENTINE DRAFT CONVENTION ON ASYLUM

Motivated by the general uncertainty regarding the status of asylum in international law and by the difficulties encountered by numerous states during the Spanish insurrection, and having in mind the 1928 and 1933 Pan-American Conventions, a new draft Convention was drawn up by the Argentine Foreign Office and submitted to the Governments of Europe and America in July, 1937.<sup>77</sup> Remarking in the covering letter that "asylum has proved, definitely, to be one of the few forms capable of imposing between both contending parties a note of human mercy over the horrors of civil war," Dr. Lamas expressed "the conviction that the international community has arrived at a degree of juridical conscience capable of making workable an instrument of this nature" and of "putting into relief a universal desire which ought to have sufficient force and decisiveness to be crystallized into norms of permanent law."<sup>78</sup> Experience in the civil strife in Spain has indicated the need of reforming and revising the 1928 and 1933 conventions, and of finding a formula acceptable to a larger number of states.

The Lamas draft convention seems to provide more adequately for the need. Its provisions are more clear-cut and practical, evidencing careful study of comparative law and actual state practice. Rea-

<sup>77</sup> Text in Appendix XIII, *infra*.

<sup>78</sup> The covering letter is printed in Appendix XIII, following the text of the draft convention.

sonable distinction is drawn between the granting of asylum to those pursued "for political offenses or motives," and the refusal of asylum to those "accused of common crimes who may have been duly prosecuted or who may have been sentenced by ordinary courts of justice." Leaving to the proper legation, warship, aircraft, or border officials the ultimate determination of whether or not asylum should be granted in any case presenting itself, the draft offers these interpretive clauses:

"To this effect must be taken into account, principally, the circumstances which occasion the asylum, as well as the political motive in related offenses. Terrorists may not receive the advantages of asylum.

"Asylum may not be granted to deserters of land or sea forces. Should armed rebellion arise, it will be taken into account whether the act of not being present is invested with a political character."

The proper local authorities normally are to be apprised of the granting of asylum, unless "serious circumstances materially hinder or make the communication dangerous for the security of the refugees." Responsibility is placed directly upon the grantors of the asylum to prevent refugees from engaging in subversive political activities directed against any of the contracting parties, and to dissolve juntas or committees notoriously formed for such purposes, and to "place under vigilance or internment at a prudent distance from its frontiers, those political emigrés who were notoriously directing a subversive movement, as well as those preparing to unite with it."

The history of political activity in many parts of Latin America, Spain, and eastern Europe would indicate the rationality and desirability of such provisions as are incorporated in the Lamas instrument. Adopted and duly enforced, they should be helpful in reducing some of the dangerous agitation and terrorism carried on not only across state boundaries, but, in time of civil strife, from within temporary refuges provided by interested legations and embassies within the distraught state, for the legal obligations correlative to the granting of asylum are here clearly set forth. Had such a multilateral pact been in effect between Spain and those states whose legations and embassies offered asylum to Spaniards not sharing the views of the established government, some unpleasant and unnecessary disputes might have been avoided.

## CONCLUSIONS

Reviewing the events of 1936-1938, in connection with the conduct of diplomatic and consular relations between Spain and the foreign states, these conclusions are suggested:

(1) The foreign Powers were legally warranted in removing their ambassadors and ministers from Spanish territory and in establishing temporary quarters, with French sanction, at Hendaye and St. Jean de Luz, when the course of hostilities in Spain became such as to endanger their lives and safety and when the Spanish Government became unable to provide them adequate protection and communication facilities. This withdrawal did not involve a rupture of friendly or diplomatic relations with Spain, the more so since the embassies and legations at Madrid were kept open regularly, and business transacted with the Spanish Government through responsible junior diplomatic officials.

(2) The foreign Powers were entitled to commence and to carry on informal relations with the insurgents when the latter obtained possession of a large portion of the territory of Spain, established responsible government, and when the exigencies of warfare required representations to be made to them. The opening of liaison or consular offices in insurgent territory for these purposes implied no rupture of diplomatic relations with the established government, or recognition of the insurgent authorities as the *de jure* government of Spain.

(3) No requirement of international law forbade the German, Italian, and other governments to terminate their official relations with the Spanish Government at Madrid, or to recognize the insurgent authorities as the *de jure* government of Spain, as they did in November, 1936, as noted in Chapter I. Such action was patently unfriendly to Madrid and the latter was entitled by international law to regard the act not only as unfriendly, but as hostile, if it chose to do so, in view of the premature nature of the recognition. Without question there was intervention in the internal affairs of Spain by German and Italian subjects and officials, in excess of the allowances of international law. Although such procedure was regarded by the Spanish Government as "aggression" and as acts of war, there is

nothing to show that either the Spanish Government or these foreign states regarded the situation as amounting to a "state of war."

(4) The assault upon several foreign diplomatic and consular officials involved transgression of international and Spanish law respecting the inviolability of diplomats, and of consuls when engaged in their official duties. The failure of the Spanish Government to pursue and to prosecute the guilty parties compromised the government and rendered it guilty of an international tort, which, in the Borchgrave case, was recognized through the settlement made with the Belgian Government.

(5) Long-standing practice in Spain and in Spanish jurisprudence established precedent for the granting of asylum to Spanish political refugees in the foreign embassies and legations at Madrid. The practice, and eventually the right, were accepted by the Madrid Government. The excesses and abuses permitted in several instances, together with the protracted disputes and difficulties, demonstrated the need of international legislation covering the question of asylum. The Lamas draft appears to be one of the most rational projects yet advanced for general adoption. It is to be hoped that it may become the subject of serious negotiation and adoption before other civil wars of the magnitude of the Spanish affair come upon the scene.

## CHAPTER VI

### THE UNITED STATES AND THE CIVIL STRIFE

ALTHOUGH removed geographically and politically from the conflict within and about Spain, the United States was not left unaffected. Complications affecting American rights and interests called for a reconsideration of historic policies toward civil strife abroad, especially as such policies are to be applied outside the American hemisphere. The extended hostilities, and the evolution of the European Non-Intervention system, occasioned a testing of the embargo and non-enlistment legislation of the United States and evoked query as to the propriety and value of current law.

#### PROTECTION OF AMERICAN LIFE AND PROPERTY

Upon the outbreak of the insurrection in mid-July, 1936, two major problems immediately confronted the United States in common with other countries: the safety of nationals, and the conservation of property rights and interests. Fifteen hundred Americans were recorded as resident in Spain, together with considerable numbers of summer tourists.<sup>1</sup> Efforts were made to contact all citizens at once and to warn them of the hazards of remaining in the country. The American Embassy was opened to all Americans who desired to take shelter there; <sup>2</sup> through the coöperation of the Navy and steamship companies, naval and passenger vessels were sent to Spanish ports to pick up Americans as well as other foreigners; <sup>3</sup> arrangements were made for specially guarded trains and motor caravans to carry Americans and others from inland centers to the seaboard.<sup>4</sup> American policy was to lend "every effort in the protection of American citizens and to afford them means of evacuation." While an attempt was made to induce all Americans whose presence was not imperatively demanded to leave Spain, Secretary Hull later stated that "the Government will continue its

<sup>1</sup> *Press Releases*, Vol. XV, p. 68.

<sup>2</sup> *Ibid.*, p. 70.

<sup>3</sup> *Ibid.*, p. 73.

<sup>4</sup> *Ibid.*, p. 112.

every effort to protect" those who might remain.<sup>5</sup> No thought was given to a policy of non-protection, as advocated on various occasions in the past in connection with civil strife in China by certain groups of interested parties in the United States and China.

American property and business investments in Spain were estimated by the Department of Commerce to approximate seventy million dollars. The larger part comprised public utilities and automotive plants. Within a brief period large portions of these foreign properties were taken under control by labor unions, militia, and government agencies to be used for war purposes. A vigorous note was presented by Mr. Wendelin, in charge of the Embassy in Madrid, clearly setting forth the policy of the Government in Washington and establishing a *caveat* upon which reliance might be placed in the adjustment of matters at a later date. "This Government cannot admit that private property, whether in the hands of American nationals or abandoned by them temporarily because of conditions over which they have no control, may be interfered with with impunity or denied the protection to which it is entitled under international law. This Government must, of course, look to the Government of Spain for the protection of such property and for indemnification for any delinquency in this respect. In the event of requisition for the necessities of war or otherwise of American property, this Government must insist that provision be made for prompt and full compensation to the owners."<sup>6</sup>

To this the Foreign Office at Madrid replied that ". . . the Government of the Republic holds as an unalterable principle not to take possession of any property, movable or immovable, belonging to Spanish citizens or foreigners, except naturally in cases of *force majeure*, and especially when it is a question of the safety of the State, or public interests so require. In such a case it will pay the value, after a just and equitable appraisal, and if possible—and this is the chief desire of the Government—in agreement with the interested parties or their legal representatives."<sup>7</sup>

Similar demands, it may be added, were addressed by American consular officers located in the insurgent territory to the local and *de facto* authorities, eliciting generally similar response. While no great amount of American property appears to have been destroyed

<sup>5</sup> *Press Releases*, Vol. XV, p. 124.

<sup>6</sup> *Ibid.*, pp. 131-132.

<sup>7</sup> *Ibid.*, p. 187.



in the hostilities, much of it was expropriated by various authorities, and large amounts of currency and exchange belonging to American interests were frozen and blocked within the country.

One of the most unusual aspects of the Spanish situation was the establishment of many of the foreign ministers and ambassadors accredited to Spain across the border at Hendaye and St. Jean de Luz, in France, as noted in the preceding chapter. Like many other members of the diplomatic corps, Ambassador Bowers was summering on the north coast of Spain when the disturbance first developed. Cut off from all communication with Madrid and with the American consulates by the rapid spread of the fighting, and personally jeopardized by the investiture of the Basque resorts, Mr. Bowers fled to the American cutter *Cayuga*, where for a fortnight he maintained diplomatic headquarters while cruising off Spanish shores. Subsequently, residence was established in the French border town, in common with the envoys of Argentina, Belgium, Great Britain, Czechoslovakia, France, Germany, Italy and Sweden, who were later joined by nearly all of the leading diplomats accredited to Madrid. Relations with the Spanish Government were maintained through the American Embassy, which remained open, at Madrid and later at Valencia, in charge of American Foreign Service Officers. Following a long line of practice in times of insurrection in Latin American states, contacts and relations made necessary with the insurgent authorities as a result of dangers or injuries to American life, property or rights by acts of the insurgents, were handled informally by American consuls and Foreign Service Officers resident in territory held by the Nationalist authorities.

#### PROTEST AGAINST CONTROL OF DIPLOMATIC COMMUNICATIONS

The disruption and censorship of communications created a problem in inter-governmental relations. The United States, in company with other states, protested vigorously against such interference with confidential diplomatic telephone and mail communications on the basis of long-standing principles of international law protecting the freedom and inviolability of such diplomatic necessities.<sup>8</sup> According

<sup>8</sup> In 1893 France forced Spain to dismiss a customs official for tampering with diplomatic dispatches, *R.D.I.P.*, Vol. I, p. 60; see also Article 14 of the *Draft Convention on Diplomatic Privileges and Immunities*, *A.J.I.L.*, Vol. XXVI (1932), Suppl. No. 2, pp. 79-85; International Commission of Jurists, Project VII, "Diplomatic Agents,"

to the *Draft Convention on Diplomatic Privileges and Immunities* of the Research in International Law of the Harvard Law School, which sought to enunciate generally accepted rules of law, "a receiving state shall freely permit and protect official communications by whatever available means . . . between a mission or the members of a mission and the sending state. . . ." According to Article 10 of the Convention of the Postal Union of the Americas and Spain, signed at Madrid, November 10, 1931, and ratified by both Spain and the United States:

2. The exchange of correspondence of the Diplomatic Corps between the Secretaries of State of the respective countries and their Embassies or Legations will have a reciprocal character among the contracting countries, and will be effected in open mail or by means of diplomatic pouches, in accordance with the provisions of Article 5 of the Regulations of Execution. These pouches will enjoy the franking privilege and all the guarantees of the official dispatches.<sup>9</sup>

As a result of the energetic protest of Mr. Wendelin, the American Chargé d'Affaires, the Spanish Foreign Minister in a formal note "expressed profound regret for the violation of the Embassy correspondence, adding that he has requested the Ministry of Communications 'to take all necessary measures in order that official, as well as personal, correspondence of diplomatic representatives accredited in Madrid be completely exempt from all censorship.' " <sup>10</sup>

#### INTERFERENCE WITH AMERICAN SHIPPING

The present Spanish strife will long be remembered, among many other things, for the extent and nature of the interference with foreign shipping by the contesting parties, whose belligerency the Powers consistently refused to recognize. American shipping in the Mediterranean suffered far less than that of most of the larger European states, although it was not entirely untouched. The S.S. *Exmouth*,

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Article 20, *A.J.I.L.*, Vol. XXII (1928), Spec. Suppl., p. 252; Satow, *op. cit.*, Vol. I, secs. 279-280; Moore, *Digest*, Vol. IV, secs. 675, 678, 679; Oppenheim, *op. cit.*, Vol. I, sec. 386; Fauchille, *op. cit.*, Vol. I, Pt. III, p. 66; Calvo, *op. cit.*, Vol. III, p. 331. See also Articles 4 and 15 of the Havana Convention on Diplomatic Agents, 1928, Hudson, *International Legislation*, p. 2385 *et seq.*

<sup>9</sup> Hudson, *International Legislation*, Vol. V, p. 1109. See also Article 5 of the Regulations for the Execution of the Convention. *Ibid.*, Vol. V, pp. 1123-1124.

<sup>10</sup> *Press Releases*, Vol. XV, p. 190.

U.S.S. *Kane*, and U.S.S. *Erie* were fired upon by rebel craft on the high seas during the first six months of the war.<sup>11</sup> A tramp tanker, the *Nantucket Chief*, carrying petroleum for the Spanish Government from Russian ports, was seized by the insurgents and forced to discharge its cargo at a port held by the latter.<sup>12</sup> A tramp freighter, the S.S. *Wisconsin*, engaged in running war supplies for the Spanish Government from French and other ports, was bombed twice, in company with other craft engaged in such traffic, while discharging at Barcelona.<sup>13</sup> Protests were lodged with both parties in Spain respecting the firing upon the *Exmouth* and *Kane*, and satisfaction demanded and given that instructions would be issued to prevent recurrences.<sup>14</sup> In the case of the *Nantucket Chief*, representations were addressed to the insurgent authorities against the seizure of the vessel and the imprisonment of members of the crew, resulting in their release.<sup>15</sup> The United States held, and quite properly under international law, that in the absence of recognition of belligerency neither party had any legal right to interfere in any manner, whether by surface, sub-surface, or aircraft, with American shipping upon the high seas.<sup>16</sup> Control and interference within the three-mile limit was not objected to, provided there was no condemnation as for the violation of a blockade, and provided the vessels were not made the objects of direct attack. Like the Powers in Europe, the United States refused to reply affirmatively to invitations to extend belligerent rights, and it also refused to regard a state of belligerency as being existent—notwithstanding the actions of the parties—in the absence of any express recognition.<sup>17</sup>

Probably the leading problem facing the American Government during the Spanish strife was that of determining whether or not arms, ammunition and implements of war should be allowed to go to Spain for the furtherance of hostilities. The United States was not at the time and probably never would have become as vitally concerned over the question and result of foreign armed intervention as were many of the countries of Europe. Nevertheless, the development of the European Non-Intervention Accord, whereby the partici-

<sup>11</sup> *New York Times*, July 24, Aug. 30, Dec. 19, 1936.

<sup>12</sup> *Ibid.*, Jan. 22, 1938.

<sup>13</sup> *Ibid.*, June 20, 1938.

<sup>14</sup> *Press Releases*, Vol. XV, pp. 84, 104, 202.

<sup>15</sup> *Ibid.*, Vol. XVIII, p. 205.

<sup>16</sup> *Ibid.*, Vol. XV, pp. 192-193.

<sup>17</sup> *New York Times*, Nov. 21, 1936...

pants expressed the intention of forbidding the shipping of certain categories of munitions to Spain, necessarily raised the issue whether the Spaniards should be allowed to obtain here what they were apparently to be denied in Europe.

Well-known legislation dating from 1912 and 1922 has allowed the President to embargo war materials at times of domestic violence in any country in the Americas or in which the United States exercises extraterritorial jurisdiction, whenever he finds "conditions of domestic violence exist, which are or may be promoted by the use of arms or munitions of war procured from the United States. . . ." <sup>18</sup> No statute, however, authorized the imposition of an embargo upon munitions to Spain, so long as the situation there was not one of "war between or among two or more foreign states." <sup>19</sup>

#### THE UNITED STATES AND THE NON-INTERVENTION ACCORD

Although the United States was never formally invited to join the Non-Intervention system, the Department of State officially announced on August 11, 1936, that this Government was following "a policy of non-interference in the internal affairs of foreign countries." Admitting the traditional policy toward the internal politics of European states, the issuance of the announcement at the moment negotiations were in progress between the French and British Governments for the Non-Intervention Accord, and four days before that accord took the form of the exchange of notes upon which the entire structure of non-intervention was based, is an interesting coincidence. Combined with the fact that measures similar to those adopted first by Britain and France, and then by all of the non-intervention parties, to stop the passage of volunteers to Spain, were taken at the time these two Powers were negotiating with the other states in Europe, substance would seem to be lent to the argument that the policy of the United States was one of support of Britain and France

<sup>18</sup> *United States Code*, Title 22, sec. 236.

<sup>19</sup> Neutrality Law of 1936, *A.J.I.L.*, Vol. XXX (1936), Suppl., pp. 58-62, 109-110. See Instructions to Foreign Service Officers in Spain, *Press Releases*, Vol. XV, p. 152. The Havana Convention on the Duties and Rights of States in the Event of Civil Strife, 1928, provided that the adherents, including the United States, should "forbid the traffic in arms and war material, except where intended for the Government, while the belligerency of the latter has not been recognized, in which latter case the rules of neutrality shall be applied." This, however, was not applicable regarding the situation in Spain.

and of their policies toward Spain, albeit by separate and parallel rather than by collective action.

#### THE EMBARGO LAW OF JANUARY 8, 1937

Being unable to deter all applicants for munitions-export licenses by suasion on moral and patriotic grounds,<sup>20</sup> the act of January 8, 1937, was rushed through Congress making it unlawful "during the existence of the state of civil strife now obtaining in Spain" to export materials of war to Spain or to any country for transshipment to Spain for the "use of either of the opposing forces in Spain."<sup>21</sup> It may be noted that the embargo applied to both parties, as did the European Non-Intervention system, and that the commodities listed under the Proclamation of April 10, 1936, which was made applicable toward Spain, corresponded closely to those proscribed by the Non-Interventionist states and serialized in the Report of Mr. Francis Hemming, Secretary to the Committee in London.<sup>22</sup>

#### THE LAW OF MAY 1, 1937

Having in mind the limited applicability of the laws of 1912, 1922, and of January 8, 1937, and the then prevailing sentiment in favor of curtailment of the munitions traffic, provisions were written into

<sup>20</sup> *New York Times*, Aug. 22, Dec. 28, 29, 30, 1936. The Department of State replied to the inquiries of arms manufacturers and exporters in the following vein:

"In reply to your inquiry, I beg to say that the attitude and policy of this Government relative to the question of intervention in the affairs of other sovereign nations has been well known, especially since the conclusion of the Montevideo Treaty of 1933.

"For your further information, I enclose a copy of a circular telegraphic instruction which was recently sent to certain consular representatives in Euope . . . (See *Press Releases*, Vol. XV, p. 152).

"I desire to call especial attention to the reference therein to our neutrality laws and to the fact that they have no application in the present Spanish situation, since they apply only in the event of war between or among nations.

"Furthermore, I invite your attention with equal force to the reference, in the same circular instruction, to this Government's well established policy of non-interference with internal affairs in other countries, as well as to the statement that this Government will, of course, scrupulously refrain from any interference whatsoever in the unfortunate Spanish situation. At the same time the Department expressed the opinion that American citizens, both at home and abroad, are patriotically observing this recognized American policy.

"In view of the above, it seems reasonable to assume that the sale of aeroplanes, regarding which you inquire, would not follow the spirit of the Government's policy." *Press Releases*, Vol. XV, p. 177.

<sup>21</sup> Text in Appendix XIV-1, *infra*.

<sup>22</sup> *Hemming Report, op. cit.*, p. 6.

the law of May 1, 1937, authorizing the institution of an embargo "whenever the President shall find that a state of civil strife exists in a foreign state and that such strife is of a magnitude or is being conducted under such conditions that the export of arms, ammunition, or implements of war from the United States to such foreign state would threaten or endanger the peace of the United States."<sup>23</sup> In the Proclamation issued by the President on the same date putting this law into operation regarding Spain, no mention whatsoever was made of the law of January 8.<sup>24</sup> As the law of May 1 did not repeal or supersede the earlier statute, two separate acts continued to apply to the exportation of arms and munitions destined for Spain.

It has been contended by partisan groups within the United States and abroad that the American embargo laws and the Non-Intervention Accord amounted to violations of international law, through depriving the established government of Spain of the "right" to purchase and export arms. It is doubtless true that nice principles of a family of nations and of the solidarity of states bring in their train an ethical obligation of mutual support, one government of another. It is certainly true that the giving of active aid to rebels by a foreign government is an unfriendly act toward the established government, justifying remonstrance, severance of diplomatic relations, and even reprisals. On the other hand, there is no universally accepted rule of international law, much less multilateral international convention outside of the Americas, requiring states to place arms and munitions at the disposal of a friendly government distraught by domestic rebellion.<sup>24a</sup> Inherent in the fundamental principle of the sovereignty of states, which forms the basis of international law and relations, is the right of each state to decide for itself, and upon whatever grounds it may see fit, what articles shall be imported into and exported from the national domain to foreign countries. No foreign state or group of individuals belonging therein has any *right* to export anything it may desire at its discretion from the United States regardless of the latter's laws and policy. To admit the contrary would destroy the sovereignty of the state and lead to mischievous results. The right of a government to make commerce in any commodity whatever unlaw-

<sup>23</sup> Text in Appendix XIV-2, *infra*.

<sup>24</sup> Text in Appendix XIV-3, *infra*.

<sup>24a</sup> See especially A. McNair, "The Law Relating to the Civil War in Spain," *op. cit.*, p. 473; C. Rousseau, "La Non-Intervention en Espagne," *op. cit.*, p. 228.

ful and prohibited cannot be legally questioned. It is unfortunate if the effect of the imposition of the embargo results in weakening the hand of the established government in Spain. If administered strictly, without exception in favor of shipments to rebels either directly or through third countries, an embargo such as resorted to in connection with the Spanish strife cannot be treated as an "unfriendly act against Spain," or as "weakening the authority of international law." It is unfortunate, but not the concern of a foreign state, if an established government cannot preserve domestic peace, cannot retain the loyal support and control of its troops and munitions factories. While insurrection may be a crime and treason under municipal law, it is not an unlawful action under international law. International law embraces the subject of insurgency, gives it legal standing, and authorizes foreign states to have *de facto* relations with insurgent authorities. It cannot be said, therefore, that it necessitates support of an established government in suppressing insurrection.

#### TREATY RELATIONS WITH SPAIN

It has been argued that the American laws "constituted a patent violation" of the Treaty of Friendship and General Relations of 1902 with Spain,<sup>25</sup> which provides for "a full, entire and reciprocal liberty of commerce . . . between the citizens and subjects of the two High Contracting Parties. . . ." <sup>26</sup> This argument overlooks, however, further clauses in the treaty itself, together with the basic principles underlying commercial treaties. The same article recites further that "It is . . . understood that these provisions are not intended to annul or prevent, or constitute any exception from the laws, ordinances and special regulations respecting taxation, commerce, health, police, and public security, in force or hereafter made in the respective countries applying to foreigners in general." Article 8 adds that the same bounties, drawbacks and duties are to be enforced on "any article which is or may be *legally* exported from the said territories." These provisions obviously make allowance for the establishment of prohibitions, particularly if, as in the case of the May 1 law, they apply "to foreigners in general." According to the Proclamation of the

<sup>25</sup> "The Relations Between the United States and Spain during the Spanish Civil War," *National Lawyers Guild Quarterly*, Vol. I, p. 55.

<sup>26</sup> Malloy, *op. cit.*, Vol. II, p. 1701 *et seq.*

President on May 1, the condition of domestic strife in Spain "is being conducted under such conditions that the export of arms . . . to Spain would threaten or endanger the peace of the United States." Can it be contended that a treaty of friendship should be enforced in such a way as to "threaten or endanger" the peace between the states parties to the treaty? If it be said that the violation is by the law of January 8 rather than by that of May 1, it must be admitted that the embargo there placed applied to Spain, or to shipment to any foreign country for transshipment to Spain, and not "to foreigners in general." However, it may be replied that not only does the 1902 treaty take cognizance of the fact that it may be made unlawful to export certain commodities, but also that the treaty contained no clause denying the parties the privilege of laying an embargo upon the shipment of certain articles from one to the other. Commercial treaties presume that only such advantages are given as are explicitly stated or derivable through the most-favored-nation clause. It has been held by a long line of rulings in the Supreme Court that a commercial treaty cannot deprive Congress of its legislative power (including the power to regulate commerce) and that when the repugnancy between a treaty and a later act of Congress may be clear, the treaty must yield. No case is known where it has been successfully established before the Supreme Court that the invocation of an arms embargo respecting shipments to a particular country in time of civil strife has amounted to a violation or abrogation of a commercial treaty similar to that of 1902 with Spain. Professor McNair says regarding the same problem concerning the British-Spanish treaty of 1922, "The British Government has frequently been advised by the Law Officers of the Crown that the existence of war or some other emergency . . . affords a legal justification for the temporary suspension of the operation of a commercial treaty."<sup>26a</sup>

#### ACTION REGARDING SHIPMENTS OF ARMS HERETOFORE UNDER LAWS OF 1912 AND 1922

It has also been said that the embargo was a sweeping departure from historic American policy of supplying friendly governments beleaguered by domestic revolt with arms. A careful examination of the application of the laws of 1912 and 1922 will reveal considerable

<sup>26a</sup> "The Law Relating to the Civil War in Spain," *op. cit.*, p. 474.



difference of policy upon the part of the Government in Washington. The proclamations of President Taft in 1912, and similarly of President Wilson in 1915, relating to the strife in Mexico, both ordained a complete embargo on the shipment of arms to Mexico, making no exceptions in favor of the established government.<sup>27</sup> The proclamation of President Harding relating to China in 1922,<sup>28</sup> and that of President Roosevelt relating to Cuba in 1934,<sup>29</sup> laid down a general embargo, but contained a clause authorizing the Secretary of State to prescribe exceptions and limitations in the application of the prohibition, which actually permitted the shipment of arms to the governments in question. The proclamation of President Hoover concerning Brazil in 1930 specifically exempted shipments destined to the Government.<sup>30</sup> The only established government formally denied the privilege of exporting munitions from the United States in time of civil strife since 1912 has been the Mexican Government.<sup>31</sup> In all other instances, export permission has been given whenever the legation or embassy in Washington has made official request for permission to export arms or munitions.

#### CRITIQUE OF THE PROVISIONS OF THE MAY 1, 1937, LAW AS APPLICABLE TO CIVIL STRIFE

What light has the progress of the Spanish contest shed upon the terms or the operation of the 1937 embargo legislation? In the first place, it has indicated the questionability of the *casus operandi* contained in the May 1 law: "Whenever the President shall find that a state of civil strife exists in a foreign state and that such strife is of a magnitude or is being conducted under such conditions" that exportation of arms and munitions of war from the United States "*would threaten or endanger the peace of the United States . . .*" Notwithstanding the recitation of this clause in the Presidential Proclamation of May 1, 1937, it can hardly be held that either the strife in Spain or the method of its conduct has been such that exportation of munitions actually would have threatened or endangered the peace

<sup>27</sup> U. S. For. Rels., 1912, pp. 745-746; *ibid.*, 1915, pp. 780-781.

<sup>28</sup> Department of State, *International Traffic in Arms: Laws and Regulations* (4th ed., 1937), p. 22.

<sup>29</sup> *Press Releases*, June 30, 1934, p. 456.

<sup>30</sup> *Ibid.*, Oct. 25, 1930, pp. 264-265.

<sup>31</sup> Hyde, *op. cit.*, Vol. II, p. 183, n.; *International Traffic in Arms, op. cit.*, p. 23; E. M. Borchard, "Neutrality and Civil Wars," *A.J.I.L.*, Vol. XXXI (1937), p. 305.

of the United States. Admitting that the May 1 law was pacifist legislation, and that it is difficult to legislate peace,<sup>32</sup> it does seem strained to make the application of an embargo in time of civil strife abroad depend upon the determination of a threat or danger to the peace of the United States, whereas under the 1912-1922 law, still in force, regarding the American countries and those in which extra-territorial jurisdiction is exercised, the President need only find that "conditions of domestic strife exist, which are or may be promoted by the use of arms or munitions of war procured from the United States," and make proclamation thereof. It is difficult to see why a distinction should be drawn in applying an embargo between strife in the Americas and China, and strife elsewhere. It is conceivable that under analogous conditions in the future in a civil strife in State X in Europe, the President might encounter considerable difficulty in finding that the strife was of such a magnitude or was being conducted in such a manner that the exportation of arms would threaten the peace of the United States, while at the same time it might be desirable and proper that the exportation of arms and munitions should be stopped.

The operation of the 1937 law during the Spanish strife would appear to indicate the wisdom of adopting terminology more nearly resembling that contained in the earlier legislation, if the object of American policy is to be non-intervention in strife abroad and to prevent the American arms markets from being used as a means of promoting or influencing civil strife elsewhere. However, an interesting conjecture may well be raised in this regard. Let it be supposed that a civil disturbance of large magnitude, aided and abetted by some non-American state or combination of states, directly or indirectly, should develop in State Y in the American Hemisphere in an area bordering upon the United States or one of its possessions. Under such conditions it would appear demonstrable both that the conflict *ab initio*, and that the export of arms and munitions from the United States might "threaten or endanger the peace of the United States." By the terms of the May 1, 1937, law, would not the institution of an embargo be called for? And yet, would any thoughtful student or administrator of American foreign policy doubt for a moment that

<sup>32</sup> A. W. Dulles and H. F. Armstrong, "Legislating Peace," *Foreign Affairs*, Oct. 1938, pp. 1-12.

under such circumstances an embargo most certainly should not be established, at least in such a manner as to weaken in any way the ability of the party—whether the established government or the insurgent authority—to resist successfully the threat to the “personality, sovereignty, and independence” of the American state or possession by any non-American state, directly or indirectly, seeking to colonize, to extend its political system, or to interpose “for the purpose of oppressing them, or controlling in any other manner their destiny.” The Declaration of Lima of the Solidarity of America would appear to point to the obligation to follow such a course. A requirement that a non-partisan embargo should be established at such a time would and should be ignored. Indeed, it is difficult to see that any constructive purpose is served by the peace-endangerment clause in the 1937 law.

#### SUGGESTED CHANGES

Considering the fundamental principles of American foreign policy, the international conventions to which the country is a party, the ever possible threat to the smaller nations of the American Hemisphere, it would seem advisable that the law relating to an embargo in time of civil strife abroad should read somewhat as follows:

*Whenever the President shall find that conditions of civil strife exist in a foreign state or possessions which are or may be promoted by the use of arms, munitions or implements of war procurable within the United States, and shall make proclamation thereof, it shall thereafter be unlawful to export, or attempt to export, or cause to be exported, such arms, munitions or implements of war as the President by proclamation shall enumerate, from the United States or any of its possessions to a party or destination within such foreign state, or to any third state for transshipment to destinations within such foreign state, or for the use of parties engaged in military activities therein except under such limitations and exceptions as the President shall prescribe, and until such time as the President shall, by subsequent proclamation, declare the said embargo ended.*

Such provisions would appear to be adequate, both by their inclusiveness and by the comprehensiveness of the exception-clause, to cover all situations which might arise dictating the establishment of an embargo. However, should it seem desirable to make certain propositions more specific, the following proviso-clauses might be added to the above.

*Provided, however, that nothing in the preceding clause shall be construed or interpreted to require the establishment of an embargo upon the shipment of arms, munitions or implements of war in a manner contrary to any international obligation to which the United States may be a party; (viz., The Havana Convention on the Duties and Rights of States in the Event of Civil Strife.)*

*And provided further, that when the location and nature of the said civil strife shall be such as to threaten or endanger the territory of the United States or of any of its possessions, nothing in the aforesaid clause shall be construed or interpreted to limit or restrain the prescription of limitations and exceptions for the exportation of arms, munitions or implements of war;*

*And provided further, that when the said civil strife shall be in a state or possession in the American Hemisphere, and when the said strife is being aided or promoted by a non-American state, directly or indirectly, to the detriment of the personality, political system, sovereignty or territorial integrity of the said American state or possession, nothing in the aforesaid clause shall be construed or interpreted to limit or restrain the prescription of limitations and exceptions for the exportation of arms, munitions or implements of war.*

Mention has already been made in the above suggestion of the destination of the arms and munitions of war. An examination of the wording of the law of May 1, 1937, in this connection and in reference to the international situation which has prevailed since July, 1936, will reveal the desirability of change in the existing law. Paragraph C of Section (1), states: It shall be unlawful to export "to such foreign state, or to any *neutral state* for transshipment to, or for the use of, such foreign state." In time of civil strife in a foreign country a third state would be a "neutral state" under law only if it had recognized the belligerency of the contesting parties and had proclaimed its neutrality. Thus, in the situation which has existed since July, 1936, during which no foreign state has recognized the belligerency of the Spanish contestants, there have been no "neutral" states. According to strict legal interpretation, it would have been quite lawful to export from the United States to France for transshipment to Spain. To be sure, the intention of Congress was to forestall export to third countries for transshipment to a destination within the state undergoing the civil strife.<sup>33</sup> This the law did not say, however. Furthermore, the

<sup>33</sup> Indictments were handed down in the Federal Court of the Southern District of Texas on Dec. 6, 1938, against parties transporting planes to Mexico for shipment to Loyalist Spain. The news report stated that the action was brought under the Neutrality Law of 1935. *New York Times*, Dec. 7, 1938.

words which indicate the destination of a shipment are capable of an interpretation which might be embarrassing. They read: "*To such foreign state,*" for transshipment "*to or for the use of, such foreign state.*" It seems apparent that the framers had in mind shipment both to the *government* of the state and to private parties within the state. "*To such . . . state,*" and for "*use of, such state,*" are construable as referring only to the government of the State. It would be better if the law read:

*To a party or destination within such foreign state, or to any third state for transshipment to destinations within such foreign state, or for the use of parties engaged in military activities therein.*

Among the phases of the embargo legislation most widely discussed has been that of the extent of Presidential discretion. Careful inspection of that portion of the law having to do with civil strife will indicate that a very extensive discretion has been lodged with the President by which he may: (1) fail to find peace threatened, and institute no embargo; (2) find peace threatened or endangered at any stage of a foreign civil strife and so proclaim an embargo; (3) find the peace no longer threatened, notwithstanding the continuance of a disturbance, and raise the embargo; (4) subsequently again find the peace endangered and proclaim an embargo; (5) decide what kinds of arms and munitions to embargo or release from time to time, provided always such categories include the materials listed in Proclamation No. 2163, of April 10, 1936, and in the Convention on the Supervision of the International Trade in Arms and Ammunition and in Implements of War, signed at Geneva, June 17, 1925. In short, the President enjoys freedom in deciding the kinds of circumstances which, if arms were exported, would threaten peace; when the peace is endangered and when it is not; what kinds of materials to restrain and for how long. No definitions of the extent or propinquity of the danger are included. No pattern of uniformity is prescribed. No requirement exists necessitating the invocation of the embargo upon the *de facto* outbreak of hostilities, or of delaying the raising of it until the final termination of hostilities. Indeed, by means of a series of strategic closings, openings, and closings of the American arms markets to foreign purchase and export, the President might actually exercise a very powerful influence over the course and outcome of the

strife, amounting to intervention. The attempts of certain partisan groups to bring about a lifting of the embargo in May and again in November of 1938, show that the discretionary power and its ability to influence the course of a foreign strife are not academic propositions. In the future, as in the present situation, alien propagandists and interests will seek to direct the discretion for their own ends. When it became the object of pressure for the lifting of the embargo in May, 1938, the Department of State properly indicated that the issuance of a Presidential proclamation of revocation under the May 11 law would not raise the embargo, inasmuch as the separate law of January 8, 1937, called for the continuance of an embargo "during the existence of the state of civil strife now obtaining in Spain." In other instances of civil strife special legislation may not exist or be obtainable for fortifying embargoes laid down under the 1937 law, or its successor. It is not suggested, however, that the discretionary provisions should be eliminated because of the hypothetical possibility of their being used by a President for the purpose of influencing a civil strife abroad, or because of the potential pressure of special interest groups. The law is not likely to be used in an unscrupulous manner, in the first place, and, furthermore, the danger of alien pressure groups is not as great as some may conceive it to be. It is imperative that the President be given the maximum amount of discretion in these matters, in order that he may judge and act properly in the interests of the United States and of international obligations in the varying circumstances under which civil strife appears and develops. Alien interests may become the beneficiaries of statutory limitations upon executive discretion in the handling of foreign affairs, for with restrictions openly prescribed, foreign parties can plan in advance a course of procedure calculated to abet their own cause by circumventing the limitations or by keeping the country having such limitations from affording otherwise lawful aid to the victim of the oppressive action.

#### REGULATION OF THE DEPARTURE OF VOLUNTEERS

A further matter occasioning concern to the Government was that of Americans seeking to depart for Spain for volunteer service, and the problem of what to do with those who found their way into the armed forces in Spain and then sought to return home. The Criminal

Code has long made it a federal penal offense to enlist or accept a commission within the jurisdiction of the United States to serve in the armed forces of a foreign state, colony, district or people, and the citizenship laws have stipulated that taking an oath of allegiance to any foreign state shall be construed as effecting expatriation.<sup>34</sup> Acting parallel to the British Government, the Department of State, in January, 1937, publicly warned persons in the United States of these provisions, and announced that taking service in Spain was "unpatriotically inconsistent" with the policy of non-intervention and would leave any persons so acting without normal diplomatic protection.<sup>35</sup>

<sup>34</sup> *United States Code*, Title 18, Sections 21-22.

<sup>35</sup> Instructions issued by the Department of State, Jan. 14, 1937, read as follows:

"We have had until now no information that Americans in any considerable number were taking part in the present civil strife in Spain. In the circumstances you may deem it advisable to bring the provisions of Section 5282 Revised Statutes of the United States (Title 18, Section 22, United States Code) and Section 2 of the Act of March 2, 1907, to the attention of such Americans as you may have reason to believe are contemplating entering the military service either of the Spanish Government or of the Spanish insurgents. You may point out to these persons also that the enlistment of American citizens in either of the opposing forces in Spain is unpatriotically inconsistent with the American Government's policy of the most scrupulous non-intervention in Spanish internal affairs."

"The following pertinent sections of the United States Code will be of interest in connection with the above release:

*"Title 18, Section 21, United States Code:* 'Accepting commission to serve against friendly power.—Every citizen of the United States who, within the territory or jurisdiction thereof, accepts and exercises a commission to serve a foreign prince, state, colony, district, or people, in war, by land or by sea, against any prince, state, colony, district, or people, with whom the United States are at peace, shall be fined not more than \$2,000 and imprisoned not more than three years. (R. S. Section 5281; March 4, 1909, c.321, Section 9, 35 Stat. 1089.)'

*"Title 18, Section 22, United States Code:* 'Enlisting in foreign service; exceptions.—Whoever, within the territory or jurisdiction of the United States, enlists or enters himself, or hires or retains another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people as a soldier or as a marine or seaman on board of any vessel of war, letter of marque, or privateer shall be fined not more than \$1,000 and imprisoned not more than three years. *Provided*, That this section shall not apply to citizens or subjects of any country engaged in war with a country with which the United States is at war, unless such citizen or subject of such foreign country shall hire or solicit a citizen of the United States to enlist or go beyond the jurisdiction of the United States with intent to enlist or enter the service of a foreign country. Enlistments under this proviso shall be under regulations prescribed by the Secretary of War. (R.S. Section 5282; Mar. 4, 1909, c.321, Section 10, 35 Stat. 1089; May 7, 1817, c.11, 40 Stat. 39.)'

"As it is possible that a person enlisting in the military establishment of a foreign country might be required to take an oath of allegiance, attention is also invited to the following provisions of section 2 of the Act of March 2, 1907, regarding the loss of American citizenship by an oath of allegiance to a foreign country:

To buttress its policy, and again acting in conformity with European practice under the Non-Intervention system, the Department subsequently refused to accept applications for passports for travel to Spain, and stamped all newly issued passports "not valid for travel in Spain."<sup>36</sup>

Notwithstanding these efforts, some three hundred Americans appear to have made their way into Spain to serve on the side of the Loyalists, and probably a much smaller number to serve with the Nationalists. The procedure of circumvention appears to have involved individual travel to France, which was legitimate; organization into small groups there to proceed surreptitiously across the border with Spanish aid, regardless of passport markings, an act not contrary to any American law; incorporation into service units within Spain, without the administration of an oath of allegiance—a further act involving no violation of American law.

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"That any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws, or when he has taken an oath of allegiance to any foreign state."

"Citizens of the United States who enlist in the military services of foreign states cannot expect, while serving in the armed forces of such states, to receive the protection which is ordinarily accorded by this Government to its citizens." *Press Releases*, Vol. XVI, pp. 37-38.

<sup>36</sup> The general policy of the government was set forth in a published memorandum, March 3, as follows:

"As is well known, this Government, in accordance with its established policy of the strictest non-intervention in the internal affairs of other countries, is scrupulously refraining from any interference whatsoever in the present Spanish civil strife and is making every effort to reduce the possibilities of our becoming involved in that conflict. The Department believes that this well-recognized American policy meets with public approval throughout the country, and that American citizens in general are patriotically coöperating to make the policy effective. One of the measures which have been adopted in order to give effect to our policy of impartiality is the requirement that every American applying for a passport to travel abroad shall make an affidavit that it is not his intention to go to Spain. No exceptions to this requirement have been deemed feasible, notwithstanding the eminence and fine character of the organization under whose auspices a person or persons may desire to go to Spain, in view of the fact that this Government has made every possible effort since the beginning of the Spanish conflict to remove Americans from Spain for the protection of their lives and is even now still engaged in this work. As is well known, this Government has even provided American naval vessels for this purpose.

"This Department is, of course, deeply distressed at the great loss of human life which has resulted from the present civil strife in Spain and sympathizes with any efforts which may be made to mitigate the terrible suffering of the Spanish people. The Department's policy of not issuing passports valid for Spain is in no way inconsistent with this feeling of sympathy and does not preclude any persons from rendering humanitarian aid to the Spanish people without the presence of Americans in Spain." *Press Releases*, Vol. XVI, pp. 125, 139-141, 154, 309-312.



As in other similar instances, little can be done by way of successful prosecution of such persons. Not having expatriated themselves, they cannot be denied readmission to the country. Provided no act of enlistment, acceptance of a commission, or entering "the service" of either party in Spain, took place within the jurisdiction of the United States, the individuals cannot be indicted or convicted under the Criminal Code. If any individual returning from armed service in Spain was, however, required at the time of his application for a passport, as suspected persons were, to affirm as a part of his application that the passport would not be used for "travel in Spain" for the purpose of taking service with the contesting parties, and if it can be proved that the passport was so used, he might be prosecuted for perjury. Upon conviction such person may be fined not more than \$2,000 and imprisoned not more than five years, a penalty exceeding in severity that provided for enlistment or acceptance of a commission. In the absence of this special affirmation, conviction could not be secured under perjury if the individual failed to designate on his application that he intended to travel to or in Spain. A special Grand Jury investigation embracing examination of a considerable number of those returned might reveal irregularities and quasi-enlistments and provide useful information for tightening up the law and administration in the event of future strife abroad, as well as throw light on the activities of foreign agents in the United States.

In conclusion it may be noted that this Government twice refused to lend support to or take part in propositions for mediation in Spain emanating from South American countries. In both instances the reply was based upon determination to adhere strictly to a policy of non-interference.<sup>37</sup>

#### SUMMARY OF AMERICAN POLICY

The fundamental characteristics of American policy toward the civil strife in Spain have involved: evacuation and protection of nationals; conservation of property rights and interests; non-interference; withdrawal to France of the American ambassador in company with the envoys of other states; refusal to recognize belligerency and to countenance interference with American shipping on the high

<sup>37</sup> *Press Releases*, Vol. XV, p. 176; *ibid.*, Vol. XVII, pp. 349-351.

seas; discouragement and prohibition of the exportation of arms and munitions to both parties, in a manner parallel to that adopted by the European Powers composing the Non-Intervention system; discouragement of the enlistment and departure of volunteers, also in a manner paralleling that of the continental states. Experience has indicated the existence of questionable clauses in the embargo law of May 1, 1937, which might be improved upon in any future legislation by the generalization of the provisions contained in the 1912 and 1922 laws relating to embargoes in time of civil strife. It has shown, as has been the case in the past, that the non-enlistment law falls short of ability actually to stop citizens from taking service abroad. To close this gap completely, however, involves giving to law an extraterritorial character, a concept usually rejected in American jurisprudence. Generally speaking, the policy followed by the United States in connection with the Spanish affair has differed from the policy followed or agreed to by treaty with respect to civil strife in the Americas in two principal ways: withholding from an established government the privilege of purchase and export of arms, and refusal to recognize belligerent rights when maritime hostilities and actions have attained serious proportions. While quite within the bounds of propriety as policies, both may perhaps be regarded more as corollaries of a basic policy of coöperation with Britain and France than as necessary deductions from a basic policy of non-intervention and non-interference. Recognition of the Nationalist Government of Spain was withheld until April 1, 1939, by which time all semblance of Loyalist Government had disappeared, all major cities had capitulated, and the end of the strife had been formally proclaimed. At the same time a Proclamation was issued by President Roosevelt asserting that the state of civil strife described in the law of January 8, 1937, had ceased to exist, and revoking the Proclamation of May 1, 1937, thereby terminating the embargo on the shipment of arms, ammunition, and implements of war to Spain.<sup>38</sup>

<sup>38</sup> *Press Releases*, Vol. XX, pp. 245-247; *New York Times*, April 2, 1939.

## CHAPTER VII

### THE TERMINATION OF THE STRIFE

THE FALL of Barcelona and the collapse of all armed resistance in Catalonia early in February, 1939,<sup>1</sup> coupled with the flight of the Spanish Republican Government into France,<sup>2</sup> signalized the possibility of an early termination of the warfare in Spain. Considering the length, magnitude and repercussions of the strife, it was inevitable that the conclusion of hostilities should be accompanied by international complications.

#### FLIGHT OF THE SPANISH GOVERNMENT TO FRANCE

The passage of President Azaña and members of his government into France on February 5, followed by the flight of Premier Negrín and other officials on February 9, raised diplomatic and legal issues not only for France but for all states which had continued to station diplomatic representatives near the Spanish Republican Government. It was announced by the French Government on February 9 that the former established government of Spain would be considered "no longer in existence" from the moment that Premier Negrín took refuge in French territory.<sup>3</sup> Notwithstanding this pronouncement, the French Government continued to deal with the Republican leaders, both through Ambassador Jules Henry, who was stationed in southern France, and through the Spanish Embassy in Paris, to which President Azaña and others repaired, until the insurgents were recognized as the *de jure* Government of Spain on February 27.<sup>4</sup> In the meantime, Senator Léon Bérard was appointed "official representative of France" at Burgos on February 15, in order to facilitate negotiations with the insurgent authorities.<sup>5</sup> The situation of the Spanish Republican Government located in France recalls the period

<sup>1</sup> *New York Times*, Feb. 10, 1939.

<sup>2</sup> *Ibid.*, Feb. 6, 1939.

<sup>3</sup> Associated Press dispatch in *New York Sun*, Feb. 10, 1939.

<sup>4</sup> *New York Times*, Feb. 14, 28, 1939.

<sup>5</sup> *London Times*, Feb. 16, 1939.

during the World War when the Governments of Montenegro and of the newly formed Czechoslovak state existed in foreign countries. In the present instance, however, the fiction of regularity and of actual representation of Spanish territory was preserved by the retention of control over a portion of Spain and by the presence therein of Republican officials.<sup>6</sup>

The evacuation of Catalonia by all Republican authorities, and the occupation of the territory by the insurgents, necessitated the removal of foreign diplomatic representatives accredited to the government formerly situated in Barcelona. These agents withdrew to France and were located in the general vicinity of the Spanish border where they were able to contact for a time the Spanish authorities who had taken refuge in France. This action by the foreign governments concerned resulted in the interesting spectacle of a considerable number of countries having as many as three embassies or legations in France at the same time: that accredited to the Government of France, that located at Hendaye or St. Jean de Luz and embracing the chiefs of mission who had left Spanish jurisdiction in the summer of 1936, and a third at Perpignan or Marseilles with those officials previously stationed at Valencia or Barcelona.<sup>7</sup>

#### RECOGNITION OF THE NATIONALIST GOVERNMENT

The radical change in the Spanish situation indicated by the developments traced in the preceding paragraphs naturally gave rise to the question of recognizing the insurgent régime as the Government of Spain. Convinced of the hopelessness of the position of a government forced to flee from its own land and retaining but a doubtful hold upon a small portion of the state, and assured of the existence of a government in the other part of Spain able to preserve law and order and ready to assume the responsibility of acting for the state,

<sup>6</sup> An interesting *dictum* bearing upon such situations was set forth in the case of *In Re Savini And Others*, decided in the Court of Appeal of Rome, October 20, 1927, relating to the validity of a document issued by a person claiming to be a Montenegrin official in Italy. The court said, "It is true that in certain historical circumstances and in the course of events of an international character, especially if these result from war, a State may exist outside its natural boundaries and still preserve the character of a person in international law in its relations with other States and particularly in its relations with the State whose hospitality it enjoys." Quoted in the *Annual Digest of Public International Law Cases*, 1927-1928 (London, 1931), p. 167.

<sup>7</sup> *New York Times*, Jan. 27, 1939. The United States ordered Ambassador Bowers home from Hendaye on March 4.

foreign states rapidly sought to readjust their diplomatic relations by recognizing General Franco's Government.<sup>8</sup> It is interesting to observe that in several instances the decision to recognize was taken in concert by several states,<sup>9</sup> thus carrying through to a final stage something of the collective procedure which characterized foreign action toward the civil strife from its early days.

#### FOREIGN MEDIATION

At least two states, Great Britain and France, used their negotiations regarding recognition as means by which to try to draw the positions of the two parties in Spain toward an accord on the cessation of hostilities.<sup>10</sup> This involved an attempt to reconcile General Franco's demand of unconditional surrender with the Republicans' proposal to surrender without further fighting on the basis of: (1) evacuation of Spanish territory by foreign armed forces, (2) assurances that reprisals would not be taken against Republicans, (3) elimination of all foreign influence from Spain.<sup>11</sup> In arranging the "armistice" in Spain, which preceded British and French recognition, all conditions save that barring reprisals were dropped by the Republican representatives.<sup>12</sup> In the announcement of recognition in the House of Commons, Mr. Chamberlain asserted that "certain assurances" had been received from General Franco. He added, "His Majesty's Government have noted with satisfaction the public statements of General Franco concerning the determination of himself and his government to secure the traditional independence of Spain and to take proceedings only in the case of those against whom criminal charges are laid."<sup>13</sup>

<sup>8</sup> The following states were reported to have given recognition early in 1939: Czechoslovakia, Jan. 27; Irish Free State, Feb. 11; Switzerland, Feb. 14; Peru, Feb. 15; Poland, Feb. 16; Uruguay, Feb. 19; Egypt, Feb. 19; Turkey, Feb. 21; The Netherlands, Feb. 22; Denmark, Finland, Norway and Sweden decided on Feb. 22 to recognize on the same date as France; Bolivia, Feb. 24; Venezuela, Feb. 25; Argentina, Feb. 26; France, Feb. 27; Great Britain, Feb. 27; Yugoslavia, Feb. 28; Latvia, Feb. 28; Lithuania, Feb. 28; Brazil, March 1; Greece, March 1; Paraguay, March 3; Estonia, March 13; Roumania, March 28; United States, April 1. See *supra* pages 6-7 for dates of preceding recognitions.

<sup>9</sup> Denmark, Finland, Norway, Sweden; Great Britain and France.

<sup>10</sup> *New York Times*, Feb. 17, 1939.

<sup>11</sup> *Ibid.*, Feb. 17, 18, 19, 1939.

<sup>12</sup> *Ibid.*, Feb. 26, 1939.

<sup>13</sup> *Ibid.*, Feb. 28, 1939. The text of General Franco's telegram is given in *ibid.*, March 1, 1939.

One of the most interesting matters connected with the British activities at this time was the placement of the cruiser *Devonshire* at the disposal of the Spaniards for negotiating the surrender of the island of Minorca which had been in government control throughout the latter part of the strife. When approached with an inquiry whether it would be willing to provide means of conveying an insurgent official to Minorca to negotiate there with a representative of the island, the British Government readily assented on the ground that such action was a "contribution to avoid further bloodshed" and an indication of its desire to do what it could to "promote peace."<sup>14</sup> Upon arrival at Port Mahon, the commander of the war vessel called upon the local authorities, informing them of the nature of his visit and inviting them to send an appropriate delegate aboard the cruiser to negotiate with the Count of San Luis, Military Governor of Majorca. After some delay a representative arrived and negotiations proceeded aboard the cruiser, resulting in the surrender of the island.<sup>15</sup> After returning the Governor of Majorca to his island and prior to the arrival of insurgent forces to take possession of the island, the *Devonshire* put in again at Minorca, took off some four hundred and fifty inhabitants and took them to France.<sup>16</sup>

#### PROBLEMS CONNECTED WITH SPANISH PROPERTY ABROAD

Although no announcements appeared in the press, it may be assumed that during the course of the negotiations leading to recognition, numerous states raised the question of debts and claims. Of major importance in the negotiations between France and the Spanish authorities was the matter of title to the large amount of gold belonging to the Bank of Spain placed in French vaults by the Spanish Gov-

<sup>14</sup> London *Times*, Feb. 9, 1939.

<sup>15</sup> Accounts vary as to the exact place where the negotiations took place. According to an Associated Press dispatch appearing in the *New York Sun*, Feb. 10, 1939, the *Devonshire* "put out to sea to permit the conference to go forward on neutral territory." No mention of departure from the harbor of Port Mahon was reported in the news account in the London *Times*, or in Mr. Chamberlain's statement to the House of Commons, Feb. 13. London *Times*, Feb. 9, 10, 14, 1939. From the legal point of view it would make little difference where the cruiser might be, for negotiations on board a public war vessel of a "neutral" country would be considered to be in neutral jurisdiction.

Similar actions are not unknown. In 1894 the commander of the U.S.S. *Ranger*, stationed in waters off Honduras, allowed his vessel to be used for negotiations between the victorious insurgents in Honduras and the defeated government leaders for the surrender of the capital. *U.S. For. Rels.*, 1894, pp. 300-301.

<sup>16</sup> London *Times*, Feb. 10, 1939.

ernment during the early part of the strife. In the protocol of recognition, the resolution of this issue was clearly indicated: "The French Government has . . . declared that it is ready to facilitate the return to Spain of property belonging to the Spanish nation." By the same token, this accord would point to the release to agents of the new Spanish Government of vessels, bank deposits and other property.

One of the incidents connected with recognition of the new Government of Spain, which received relatively little attention in the press but which may bear significant implications, was the forcible closing and sealing of the office of the permanent delegation of Spain to the League of Nations by the Swiss authorities subsequent to Swiss recognition of the Burgos Government.<sup>17</sup> If the action may be regarded as a precedent, it would seem to imply that no government may maintain an office in Swiss territory for purposes connected with the League of Nations, which is supposed to have a personality separate from that of the Swiss Government, unless that government is recognized by the Government of Switzerland. If an office may not be maintained save under such conditions, may the Swiss Government also refuse a person accredited to a meeting of the League of Nations permission to enter Switzerland en route to the League meeting if his government is not recognized by Switzerland? If such propositions are to hold, Switzerland rather than the states members of the League of Nations, or the League of Nations itself, may determine representation at the meetings of the League. One might wonder whether Switzerland might go so far as to refuse entry to a delegate whose government was recognized but who himself might be regarded as *persona non grata* by the Swiss authorities.

Although Article 7 of the Covenant provides that "Representatives of the Members of the League and officials of the League, when engaged on the business of the League, shall enjoy diplomatic privileges and immunities," there has been considerable uncertainty as to the exact status of "permanent delegations" to the League of Nations.<sup>18</sup> While the officials of many of these delegations are invested with diplomatic character by their own governments, there is no formal

<sup>17</sup> *New York Times*, Feb. 27, 1939.

<sup>18</sup> J. Secrétan, *Les Immunités Diplomatiques des Représentants des Etats Membres et des Agents de la Société des Nations* (Lausanne, 1928), p. 28; L. Preuss, "Diplomatic Privileges and Immunities of International Agents Invested with Functions of an International Interest," *A.J.I.L.*, Vol. XXV (1931), pp. 700-701.

presentation of credentials to the Secretary-General of the League.<sup>19</sup> At the same time these persons are not accredited to the Swiss Government or attached to the legations or embassies of their countries at Berne save in a few instances. On the other hand, by a Decree of August 21, 1922, the Swiss Federal Council conferred upon the delegates a standing equivalent to that enjoyed by members of the diplomatic corps at Berne.<sup>20</sup> The position of the Swiss Government was further revealed in a portion of its reply to Questionnaire No. 3 of the Committee of Experts for the Progressive Codification of International Law, on "Questions which appear ripe for International Regulation," in 1926.

It is possible that the term "representatives of Members of the League" employed in Article 7 of the Covenant should, strictly speaking, apply only to Members of the Assembly and the Council mentioned in Articles 3 and 4 of the Covenant. If this is so, the position of "permanent representatives specially attached to the League of Nations by various States" will have to be determined in the light of the general principles of diplomatic law. As the League of Nations possesses international personality, the status of "diplomatic official," in the strict sense of the term, would seem in this case to depend primarily upon the presentation of regular credentials to the competent organ of the League . . . The present practice of the Swiss Government is to grant permanent representatives accredited to the League of Nations the benefit of diplomatic prerogatives and immunities, and to apply to their staffs the same rules as those applicable to members of diplomatic missions at Berne. This practice, which is based on a liberal interpretation of Article 7 of the Covenant, does not prejudice the question whether these representatives actually possess the status of diplomatic agents.<sup>21</sup>

Admitting that Switzerland has a protective jurisdiction over and responsibility for all persons and property located within her borders, that only those bearing passports from states and governments known to and recognized by the Swiss Government need be admitted to the country, even as transients, that in the absence of recognition there is no comity which impels a state to accord rights and privileges to nationals of the unrecognized entity, including those accorded diplomatic character by their own authorities, and admitting also that

<sup>19</sup> Preuss, *op. cit.*, p. 700. There is question whether the League has the right of legation according to P. E. Corbett, "What is the League of Nations?" *B.Y.I.L.*, 1924, p. 123.

<sup>20</sup> Quoted by Preuss, *op. cit.*, p. 701.

<sup>21</sup> League of Nations, *Document C.196.M.70.1927.V.*, p. 249.



embarrassing circumstances might well arise at meetings of the League of Nations should a delegate of Switzerland be confronted with representatives of a government not recognized by his own country, it seems somewhat questionable, however, whether the Swiss Government should undertake to exercise jurisdiction over persons and property connected with the League of Nations unless immediate circumstances necessitate such action in the interest of preserving public tranquillity or of safeguarding the foreign government property in question from the danger of injury.<sup>22</sup>

The military aspect of the Spanish civil strife came to an end on March 29, 1939. On that date the leaders of the Republican Government fled from Spain to Algeria, all major cities which had remained in Loyalist control throughout the conflict surrendered, and the last vestiges of organized government and authority on the Republican side collapsed. At the same time the Nationalist Government officially announced: "The war has ended. Total victory is Franco's." <sup>23</sup>

<sup>22</sup> In 1918 the Swiss Government forced the closing and sealing of the Russian Legation in order to protect the archives, as the former Russian chargé d'affaires and the unofficial Soviet agent were disputing possession and the archives were threatened with destruction. *Ibid.*, p. 248.

<sup>23</sup> *New York Times*, March 30, 1939. Martial law was decreed for the entire nation pending final liquidation of opposition.

## CHAPTER VIII

### CONCLUSION

#### I

#### RULES AND PRINCIPLES OF INTERNATIONAL LAW ACCEPTED AND ACTED UPON DURING THE SPANISH CIVIL DISTURBANCE

A DISTINCTION is to be drawn in time of domestic strife between the *de facto* use of armed force and the legal status and rights of belligerency.

A status of insurgency may be admitted by the established government and by foreign states. This is an acknowledgment of the fact that an organized uprising for political ends involving the use of armed force and temporarily beyond the control of the civil authorities is taking place.

Admission of insurgency does not alter the legal status of the insurgents within their own state. They remain, as previously, engaged in an unlawful attempt to overthrow the established government, and their illegal status can be altered only by an amnesty or by successfully establishing themselves as *the* government of the state.

Admission of insurgency by the established government may be accomplished by an official announcement; by a decree closing insurgent ports to foreign trade; by the institution of military rule; or by the method of conducting hostilities. The admission may be made by foreign states, either individually or acting collectively, through such means as an official announcement; the invocation of an embargo upon the exportation of materials of war; the presentation of demands that compensation be provided for foreign property taken over for "war purposes"; the entering of protests against warlike interference with foreign vessels upon the high seas.

Admission of insurgency does not alter the international status of the established government. It continues to represent the state abroad, until overthrown or until its appointees are no longer received by for-

eign states or international organizations. Premature rupture of diplomatic relations with the established government and recognition of the insurgents as the *de jure* government of the state may be regarded as an unfriendly act.

An admission of insurgency by foreign states may not be regarded as an unfriendly act by the established government, provided an armed uprising exists in fact. Such an admission may be necessary for the information of the subjects of the foreign state and for the enforcement of certain domestic legislation.

When insurgency has been admitted, the parent government cannot prescribe the relations which a foreign state shall have with the insurgent authorities. Once admitted, foreign states are entitled to enter into informal relations with the insurgent authorities concerning matters connected with the prosecution of hostilities and the protection of foreign life, property and rights. The inauguration of such relations is not to be regarded as constituting or implying accordance of belligerent rights or recognition of the legality of the insurgent régime.

Admission of insurgency relieves the established government of legal responsibility for the military and political acts of the insurgents in the areas under their control. Foreign states may require that the insurgents assume responsibility for such of their acts of this nature as may infringe upon foreign rights. If the insurrection is put down the parent government may as a matter of grace assume the responsibility of satisfying legitimate foreign claims against the insurgents. It is axiomatic that contestants in a civil strife must use reasonable diligence to protect foreign life and property within their jurisdiction, and make compensation for such foreign property as may be taken over for war purposes.

In the absence of any international agreement providing otherwise, admission of insurgency places no new international obligations upon foreign states.

International undertakings and/or domestic law may impel foreign states in time of insurgency to forbid the exportation of arms, ammunition and implements of war to the insurgents, or equally to both parties. For the same reasons foreign states may prohibit the enlistment and departure of their subjects for service with the insurgents, or with both parties.

General international law leaves the determination of such questions exclusively within the competence of each state, to be decided upon such grounds as national policy and state interests indicate. Heretofore, established governments have often been given the privilege of purchasing and exporting war materials for the suppression of an insurrection, whereas insurgents have been denied such privileges. There is no universally accepted rule of international law, however, which delimits the right of a state to shut off the exportation of any commodities within its jurisdiction or the departure of its subjects whenever it sees fit to do so.

For the enforcement of these prohibitions, foreign states may adopt, individually or collectively, such laws and other measures not involving an infringement on the sovereign rights of other states as policy and discretion may dictate. This may include requiring their merchant vessels to embark observation officers to examine the unloading of all goods and passengers destined for the distraught state, and to submit to visitation and inspection by national or international naval patrol vessels upon the high seas if expressly authorized.

There may be collective determination of the commodities to be embargoed, and of the categories of persons to be denied the right of departing for the state undergoing civil strife.

The invocation of embargoes and other prohibitions and the establishment of international machinery for their supervision may not be regarded as constituting or implying accordance of belligerent rights.

Admission of insurgency does not require that as between themselves the contestants apply the customary and conventional rules of international law relating to the conduct of public hostilities.

Contestants in a civil strife have the right to govern the movement of foreign persons and property within the land, air, and marginal sea areas subject to their control, regardless of the possession of belligerent rights. Foreigners venturing into or arbitrarily remaining in areas subject to hostile operations must assume their own risk.

Contestants have the right within their territorial waters to prevent supplies reaching the enemy, but they may not treat as an enemy a foreign vessel navigating in these waters. Domestic ports may be closed to foreign trade but foreign vessels attempting to enter may not be penalized as if for the violation of a blockade *jure gentium*.

Territorial waters may be mined, but adequate warnings and safe-

guards must be provided for foreign vessels entitled to innocent passage through such waters. The contestants may be held strictly accountable for any damages which occur to foreign vessels upon the high seas due to mines sown in territorial waters or upon the high seas.

Contestants to whom belligerent rights have not been accorded by foreign states have no right to interfere in any way (whether by surface, sub-surface, or aerial craft or instruments) with foreign vessels or craft upon, below, or in the air space above the high seas or foreign territories.

Foreign states are legally entitled to protest against every act of such interference, to enter claims for any damages or delays, to take reprisals or to employ such armed force, individually or collectively, as may be deemed necessary to put a stop to such interference.

Craft belonging to or under the influence of contestants, in a civil strife whose belligerency has not been recognized which interfere with foreign craft in the areas indicated above by methods contrary to accepted rules or principles of international law, may be opposed as if for the commission of an act of piracy. Submarines violating the 1930 Naval Rules may be attacked with a view to complete destruction.

The adoption of such measures by foreign states, either individually or collectively, may not be construed as according belligerent rights in the absence of an express granting of such rights.

Contesting parties have no legal right to demand that they be accorded belligerent rights at any time or stage of affairs. The accordance of such rights remains exclusively within the discretion of the political department of each foreign state. Determination of whether belligerent rights shall be accorded may be taken collectively. Refusal to accord such rights may not be treated by either contestant as an unfriendly act.

The granting of belligerent rights by one state is not binding or compulsive upon other states, and gives the contestants no right to exercise belligerent rights toward the persons or property of non-according states.

"Recognition of Belligerency" (better called Accordance of Belligerent Rights) involves more than the mere acknowledgment of the fact that hostilities are being conducted. It confers special rights and obligations not hitherto possessed by either party, regardless of their previous actions. It establishes a different legal status under in-

ternational law for both contestants and also for the recognizing state or states. It permits the contestants lawfully to exercise the rights and privileges of belligerents in a public war under international law toward the persons and property of the according state. It necessitates the adoption of the legal status of neutrality by the according state. It places the insurgents upon a par with the parent state so far as concerns the conduct of the war.

Foreign states acting individually or collectively may attach conditions to the accordance of belligerent rights. They may require that the contestants treat as contraband of war only those arms, ammunitions, and implements of war which they have collectively agreed to embargo. They may require that the contestants observe the declared or conventional rules of international law regulating the conduct of hostilities, so far as concerns the treatment of foreign craft and persons.

There is an international obligation upon all states to refrain from intervening in the internal affairs of other states, directly or indirectly. Intervention may constitute aggression, violation of the territorial or administrative integrity of the state, or disturb or threaten to disturb the peace between nations, and hence may come within the purview of the League of Nations.

There is a customary right of political asylum in foreign legations and warships.

The rights of foreign diplomats must be respected during civil strife. If the personnel cannot be afforded adequate safety, no objection may be raised to the temporary removal out of the area of danger, including the entire country if necessary. Diplomatic relations may be continued from the territory of another state, providing the consent of the third state is obtained. Freedom of diplomatic communications must be respected and insured during civil strife.

## II

### GENERAL OBSERVATIONS ON THE INTERNATIONAL LAW AND DIPLOMACY CONNECTED WITH THE SPANISH CIVIL STRIFE

The international crisis stimulated by the civil strife in Spain indicated clearly that within Europe neither civil warfare nor foreign intervention can be regarded as the exclusive concern of one or two

states. As has been the case in Spanish civil disturbances in the past, the present revolution was closely connected with the general political situation of Europe. From early in 1936, Spanish internal affairs were intimately related to the continental struggle between communism, fascism, and democracy.

It is unfortunate that between European states there has been no convention in force resembling the Havana Convention on the Duties and Rights of States (American) in the Event of Civil Strife. In the absence of conventional rules, European states have had to rely upon precedent and general principles of international law. Against a considerable line of precedents of intervention in the internal struggles of Spain, the general principle of the duty of non-intervention asserted by publicists and jurists has afforded inadequate legal protection. The course of the strife since July, 1936, and the acts of various foreign Powers, have demonstrated the need *first*, of reinforcing the moral character of European politics so that there will be a readiness and a determination to abide by and to enforce such principles of law as now exist; *second*, of an international body to interpret and oversee the enforcement of these principles of law; and *third*, of a convention which will render more certain the rights and obligations of states in time of civil strife, including the question of intervention.

Credit is due to the statesmen who were able to evolve the ambitious accords and the international administration which have gone under the title of the Non-Intervention system, and to their diplomatic acumen in enlisting as much coöperation and observance as they did. None would deny the extensive circumventions. Few would overlook the fact that the system amounted in reality to a form of intervention in the civil strife in Spain and operated against the established government. Few would doubt that it was connected with European power-politics, and designed to prevent the communist and fascist states from gaining control of Spain, her wealth and strategic location. Yet admitting all of these things, the net result in both law and diplomacy appears to have been a gain.

It is significant that the European states put themselves formally on record as opposing foreign intervention in the internal affairs of states disrupted by civil strife.

It is significant that the European states were able at such a time as the present to develop an international machinery and organiza-

tion for the observance and enforcement of such an accord by their subjects.

It is significant that the question of accordance of belligerent rights was dealt with in a collective manner, and that contestants in a civil strife were refused the privilege of lawfully interfering with foreign craft upon the high seas, or disrupting international peace because of their desire to win a domestic contest.

It is significant that international agreement upon a definition and listing of "arms, ammunition and implements of war" could be obtained, and that one of the conditions upon which the European states considered according belligerent rights to the contestants was that the latter should limit their designation of contraband to the commodities exclusively contained in the internationally agreed list of war materials.

It is significant that the Powers were able to agree upon international rules of conduct for surface, sub-surface, and aircraft; that they were able to establish an international naval patrol for the mutual protection of their shipping on the high seas and in non-Spanish territorial waters, and to enforce the observance of international rules.

Considering the past, and in view of the differences currently tending to estrange the Powers, the developments and practices of law and diplomacy during the Spanish civil strife are of historical importance.



## APPENDICES



## APPENDIX I

### DECLARATIONS BY THE EUROPEAN GOVERNMENTS CONSTITUTING THE AGREEMENT REGARDING NON-INTERVENTION IN SPAIN, TOGETHER WITH A DECLARATION BY THE SWISS GOVERNMENT IN REGARD TO ITS ATTITUDE TOWARD THE SITUATION IN SPAIN, 1936 <sup>1</sup>

(Translations)

#### A. DECLARATIONS BY THE EUROPEAN GOVERNMENTS CONSTITUTING THE AGREEMENT REGARDING NON-INTERVENTION IN SPAIN

##### 1. DECLARATION BY THE FRENCH GOVERNMENT <sup>2</sup>

Paris, August 15, 1936.

MR. AMBASSADOR,

The negotiations pursued between the Government of the French Republic and the Government of His Majesty in Great Britain having given proof of their accord on a common attitude to be observed in regard to the situation in Spain, I have the honor in conformity with the proposal laid before the other European Governments, and mindful of the initiatives already taken unilaterally by the Government of France, to make to your Excellency the following declaration:

The Government of the French Republic,

Deploring the tragic events of which Spain is the theatre;

Resolved to abstain rigorously from all interference, direct or indirect, in the internal affairs of that country;

Animated by the desire to avoid every complication which might prejudice maintenance of good relations between nations,

Declares the following:

1. The French Government, in so far as it is concerned, prohibits direct or indirect exportation, re-exportation and transit, to a destination in Spain, the Spanish possessions or the Spanish zone of Morocco, of all arms, munitions and materials of war as well as all aircraft, assembled or dismantled, and all vessels of war;

<sup>1</sup> *Non-Intervention Committee, Document N.I.S.(36)* 2. Document supplied by the Government of France.

<sup>2</sup> Note addressed by the Minister of Foreign Affairs, M. Delbos, to Sir George Clerk, Ambassador of Great Britain at Paris.

2. This prohibition applies to contracts in process of execution;
3. The French Government will keep the other governments participating in this entente informed of all measures taken by it to give effect to the present declarations.

The French Government, in so far as it is concerned, will put this declaration into effect as soon as the Government of His Britannic Majesty, the German Government, the Italian Government, the Government of the U.S.S.R., and the Portuguese Government shall likewise have adhered to it.

As soon as the adhesions of the other governments concerned reach it, the French Government will take care to communicate them to the British Government as well as to the other interested Governments.

I have the honor, Mr. Ambassador, etc.

(Signed) DELBOS.

## 2. DECLARATION BY THE UNITED KINGDOM GOVERNMENT

Paris, August 15, 1936.

EXCELLENCY,

The negotiations which have taken place between the Government of His Majesty in the United Kingdom and the French Government having resulted in an accord on the subject of the common attitude to be observed concerning the situation in Spain, I have the honor, in conformity with the proposal of which the other European Governments have been informed, to make to you the following declarations:

The Government of His Majesty,

Deploring the tragic events of which Spain is the theatre;

Resolved to abstain rigorously from all interference, direct or indirect, in the internal affairs of that country;

Animated by the desire to avoid every complication which might prejudice maintenance of good relations between nations,

Declares the following:

1. The Government of His Majesty, in so far as it is concerned, prohibits direct or indirect exportation, re-exportation and transit, to a destination in Spain, the Spanish possessions or the Spanish zone of Morocco, of all arms, munitions and materials of war, as well as all aircraft, assembled or dismantled, and all vessels of war, such as are enumerated in the appended Order in Council of 1931;

2. This prohibition applies to contracts in process of execution;

3. The Government of His Majesty will keep the other Governments participating in this understanding informed of all measures taken by it to give effect to the present declaration.

The Government of His Majesty, in so far as it is concerned, will put this declaration into effect as soon as the French Government, the German Government, the Italian Government, the Government of the U.S.S.R. and the Portuguese Government shall likewise have adhered to it.

On the subject of the question of re-exportation and transit, I must inform your Excellency that some practical difficulties will hinder the application in a completely effective manner in this country of a prohibition of the transit of munitions and materials of war across the United Kingdom, or the transshipment of such articles in the ports of the Kingdom, although the Government of His Majesty may be disposed to take such measures as appear practicable to attain that end. But it does not seem that the question of transit in the United Kingdom should have, in practice, serious consequences, since the form of transit which probably will be of the greatest importance in the matter will be, without doubt, the land traffic through the countries bordering on Spain. Furthermore, it is supposed that that difficulty will be solved by the fact that the proposed accord will be accepted by a larger number of powers.

I have the honor, etc.

(Signed) GEORGE CLERK.

### 3. DECLARATION BY THE ALBANIAN GOVERNMENT

Tirana, August 31, 1936.

MR. CHARGÉ D'AFFAIRES,

Referring to our discussions of August 27th and to your letters of August 29 and 30, 1936, Numbered 15 and 16, and confirming the verbal declaration which I had the honor to make to you during our interview of the 28th instant, by which the Royal Government adhered in principle to the proposition of the Government of the Republic [French] concerning non-interference in the affairs of Spain, I hasten to make known to you that the Royal Government sincerely deplores the tragic events of which Spain is the theatre and that it has decided, animated by the desire to avoid every complication prejudicial to the maintenance of good relations between nations, to abstain rigorously from every interference in the affairs of that country.

To that end, the Royal Government declares as follows:

1. It prohibits, in so far as it is concerned, direct or indirect exportation, re-exportation and transit, to a destination in Spain, the Spanish possessions and the Spanish zone of Morocco, of all arms, munitions, material of war as well as all aircraft, assembled or dismantled, and all vessels of war;

2. The Royal Government will keep the other Governments participating in this entente informed of all measures taken by it to give effect to the content of the present declaration;

3. The present declaration goes into effect immediately and the Royal Government has no objection that the high parties participating in this entente be informed of it.

I have the honor, etc.

The Minister of Foreign Affairs,

(Signed) F. ASLANI.

## 4. DECLARATION BY THE AUSTRIAN GOVERNMENT

Vienna, August 28, 1936.

MR. CHARGÉ D'AFFAIRES,

In reply to the *note verbale* No. 57, dated yesterday, which you have so obligingly remitted to me this morning, I have the honor to notify you of the following:

By my letter, dated the 19th of this month, I have transmitted to you the reply of the Federal Government to the request of the French Government to adhere in principle to the project of a declaration concerning non-interference [*non-immixtion*] in the internal affairs of Spain, and confirming the adhesion in principle of the Federal Government which you have requested of me.

In conformity with the desire of the Government of the Republic, which you have so kindly expressed to me by the aforesaid *note verbale*, to know as soon as possible of the confirmation of adhesion in principle by a formal and explicit declaration, I have the honor, in the name of the Federal Government to make to you the following declarations:

The Federal Government, deploring the tragic events of which Spain is the theatre, resolved to abstain rigorously from all interference, direct or indirect, in the internal affairs of that country, inspired by the desire to avoid all complications which might prejudice maintenance of good relations between nations, is ready to provide, according to the Federal law of January 17, 1928 (B.G.B.I. No.27,ex.1928), prohibiting the exportation from Austrian territory of all material of war, that this be applied in full to direct or indirect exportation or re-exportation, to a destination in Spain, the Spanish possessions or the Spanish zone of Morocco, of all arms, munitions, and material of war as well as all aircraft, assembled or dismantled, and every vessel of war. So far as concerns the transit of the above-mentioned categories of material of war, the legal arrangements (Ministerial Decree, B.G.B.I. No.39,ex.1860, for arms, and the law B.G.B.I. No.198,ex.1930, for munitions and explosives) according to which placing in transit of these materials is made subject to permission from federal authorities, will be henceforth applied in the prohibitive sense to the destinations previously cited and likewise to shipments now in transit.

The Federal Government will keep the other Governments participating in this entente informed of every measure taken by it to give effect to the present declaration which goes into effect immediately.

I have the honor, etc.

(Signed) GUIDO SCHMIDT.

## 5. DECLARATION BY THE BELGIAN GOVERNMENT

Brussels, August 21, 1936.

MR. CHARGÉ D'AFFAIRES,

You have kindly informed me that the negotiations pursued between the Government of the French Republic and the Government of Great Britain

have given proof of their accord on a common attitude to be observed in regard to the situation in Spain. You have communicated to me the letters exchanged on this subject on the 15th of this month and have indicated to me the decisions and measures taken by the Government of the Republic.

I have the honor to make to you the following declaration:

The Government of the King,

Deploing the tragic events of which Spain is the theatre;

Resolved to abstain rigorously from all interference, direct or indirect, in the affairs of that country;

Animated by the desire to avoid every complication which might prejudice maintenance of good relations between nations;

Has resolved the following:

The Government of the King issued a royal decree, August 19, 1936, of which the text is attached, which subjects exportation and transit of arms, munitions and material of war or those materials useful in war to a special authorization to be issued in the name of the Minister of Economic Affairs. The list of material subject to this license is also annexed.

It has decided not to grant any license for shipments to a destination in Spain, the Spanish possessions or the Spanish zone of Morocco.

This measure applies to contracts in process of execution.

I have the honor, etc.

(Signed) STAAK.

#### 6. DECLARATION BY THE BULGARIAN GOVERNMENT

##### *Note Verbale*

Sofia, August 27, 1936.

Following its *note verbale* No. 19, 789-42-I of August 10, last, by which the Royal Government has adhered in principle to the initiative of the French Government concerning non-interference in the affairs of Spain, the Minister of Foreign and Ecclesiastical Affairs has the honor to address the following declaration to the honorable Legation of France:

The Royal Government, deploring the tragic events of which Spain is the theatre;

Resolved to abstain from all interference in the internal affairs of that country;

Inspired by the desire to avoid all complications which might prejudice maintenance of good relations between nations, declares the following:

1. Although Bulgaria does not possess any factories producing arms, munitions, material of war, aircraft, assembled or dismantled, or shipyards building vessels of war, the Royal Government prohibits, nevertheless, direct or indirect exportation, re-exportation and transit, to a destination in Spain, the Spanish possessions or the Spanish zone of Morocco, of all arms, munitions and materials of war, as well as all aircraft, assembled or dismantled, and all vessels of war.

2. The present declaration goes into force immediately.

The Royal Government declares, moreover, that it sees nothing inconvenient in the publication of its declaration. For its part it engages to keep informed of measures taken to give effect to this declaration, the Governments which, having adhered to the French declaration, will reciprocally keep Bulgaria informed of the measures which they have taken as a result of this engagement. For this purpose the Royal Government is ready to appoint its Minister at London to participate in the work of the Committee which will be charged with collecting all information on the measures taken as well as examining and resolving in practice the points attached to the application of the agreed arrangements.

The Royal Minister takes the opportunity, etc.

#### 7. DECLARATION BY THE CZECHOSLOVAK GOVERNMENT

(a) Note, dated 21st August, 1936

Prague, August 21, 1936.

MR. CHARGÉ D'AFFAIRES,

The negotiations pursued between the Government of the Czechoslovak Republic and the Government of the French Republic having given proof of their accord on a common attitude to be observed in regard to the situation in Spain, the Government of the Czechoslovak Republic—assuming that the other interested Governments will act in an analogous manner—declares adhesion to the declaration which was the subject of a letter addressed, the 15th of this month, by his Excellency Mr. Yvon Delbos, Minister of Foreign Affairs of the French Republic, to his Excellency the Ambassador of England at Paris.

The Czechoslovak Government, in so far as it is concerned, intends to apply to individuals and private societies the prohibitions set forth in the above-mentioned letter.

I have the honor, etc.

(Signed) M. KROFTA.

(b) Note, dated 22nd August, 1936

Prague, August 22, 1936.

The Minister of Foreign Affairs, to complete the letter which he addressed, August 21, 1936, to the legation of France on the common attitude to be observed by the interested Governments toward Spanish affairs, has the honor to inform the legation of France as follows:

The Government of the Czechoslovak Republic,

Deploring the tragic events of which Spain is the theatre, resolved to abstain rigorously from all interference, direct or indirect, in the internal affairs of that country,

Animated by the desire to avoid every complication which might prejudice maintenance of good relations between nations;



Declares the following:

1. The Czechoslovak Government, in so far as it is concerned, prohibits direct or indirect exportation, re-exportation and transit, to a destination in Spain, the Spanish possessions or the Spanish zone of Morocco, of all arms, munitions and materials of war, as well as all aircraft, assembled or dismantled, and all vessels of war;

2. This prohibition applies to contracts in process of execution.

3. The Czechoslovak Government will keep other Governments participating in this entente informed of all measures taken by it to give effect to the present declaration.

The Czechoslovak Government, in so far as it is concerned, will put this declaration into effect as soon as the Government of His Britannic Majesty, the German Government, the Italian Government, the Government of the U.S.S.R. and the Portuguese Government and other interested Governments shall likewise have adhered to it.

#### 8. DECLARATION BY THE DANISH GOVERNMENT

Copenhagen, August 21, 1936.

MR. MINISTER,

In conformity with the proposal that the French Government through your intermediation has kindly submitted to me, and of which the other European Governments have been informed, I have the honor to make to you the following declarations:

The Royal Government, deploring the tragic events of which Spain is the theatre, resolved to abstain rigorously from all interference, direct or indirect, in the internal affairs of that country;

Animated by the desire to avoid every complication which might prejudice good relations between nations, declares the following:

1. The Royal Government, in so far as it is concerned, prohibits direct or indirect exportation, re-exportation and transit, to a destination in Spain, the Spanish possessions or the Spanish zone of Morocco, of all arms, munitions, and materials of war as well as all aircraft, assembled or dismantled, and every vessel of war.

2. This prohibition applies to contracts in process of execution.

3. The Royal Government will keep the other Governments participating in this entente informed of all measures taken by it to give effect to the present declaration.

The Royal Government, in so far as it is concerned, will put this declaration into effect as soon as the French Government, the Government of His Britannic Majesty, the German Government, the Italian Government, the Government of the U.S.S.R. and the Portuguese Government shall have likewise adhered to it.

I have the honor, etc.

(Signed) MUNCH.

## THE SPANISH CIVIL STRIFE

## 9. DECLARATION BY THE ESTONIAN GOVERNMENT

*Note Verbale*

Tallin, September 3, 1936.

Confirming the adhesion in principle of the Government of the Republic to the proposal of non-intervention in the internal affairs of Spain, in which the French Government has taken the initiative, the Minister of Foreign Affairs has the honor to make the following declarations to the legation of France:

The Government of the Republic,

Deploring the tragic events of which Spain is the theatre;

Resolved to abstain rigorously from all interference, direct or indirect, in the internal affairs of that country;

Animated by the desire to avoid every complication which might prejudice maintenance of good relations between nations, declares the following:

1. The Government of the Republic prohibits, in so far as it is concerned, direct or indirect exportation, re-exportation and transit, to a destination in Spain, the Spanish possessions or the Spanish zone of Morocco, of all arms, munitions and material of war as well as all aircraft, assembled or dismantled, and all vessels of war.

2. This prohibition applies to contracts in process of execution.

3. The Estonian Government will keep the other Governments participating in this entente informed of all measures taken by it to give effect to the present declaration.

To hasten, on its part, the realization of the agreement proposed by the French Government, the Estonian Government has decided to put into effect the measures set forth in that declaration on the date of September 10, 1936, which is the nearest date on which this can be done.

The Minister of Foreign Affairs has the honor to inform the Legation that these arrangements have been made by the Estonian Government in the expectation that the other interested Governments will apply analogous measures.

On the supposition that the other interested Governments, on their part, have likewise accepted the proposition of the French Government, in so far as concerns the designation of their representatives at London to participate in the work of a Committee which will be charged with collecting all information on the measures taken as well as examining and resolving in practice the particular points attaching to the application of the enacted arrangements, the Estonian Government has designated Mr. August Schmidt, Minister of Estonia at London, in capacity of its representative to take part in the work of the Committee. In his absence Mr. M. O. A. Grant, counselor of the Estonian Legation, will assume his duties.

In so far as concerns the publication of declarations made known to him, the Minister does not find it inconvenient.

## 10. DECLARATION BY THE FINNISH GOVERNMENT

Helsingfors, August 31, 1936.

MR. CHARGÉ D'AFFAIRES,

By your note, dated the 10th of this month, you have kindly asked me if the Government of Finland would give its adhesion in principle to the project prepared by the French Government for a declaration, the text of which was attached to the said note, and by which the Governments of the different countries declare abstention from all interference in the affairs of Spain.

According to your later communications, the Governments of France, Great Britain, Germany, Roumania, Sweden, Italy, Belgium, Czechoslovakia, Portugal, the Union of Socialist Soviet Republics, and The Netherlands have already given their adhesion, with or without reservations, to the said declaration, and several other countries have given their adhesion in principle.

Consequently, and referring to my note of August 15, by which I had the pleasure of communicating to you that the Government of Finland adheres in principle to the project of declaration on the condition that it would be the object of a general adhesion, I have the honor to make to you the following declaration in the name of the Government of Finland:

The Government of Finland,

Deploing the tragic events of which Spain is the theatre;

Resolved to abstain rigorously from all interference, direct or indirect, in the internal affairs of that country;

Animated by the desire to avoid every complication which might prejudice maintenance of good relations between nations,

Declares the following:

1. The Government of Finland prohibits, in so far as it is concerned, direct or indirect exportation, re-exportation and transit, to a destination in Spain, the Spanish possessions or the Spanish zone of Morocco, of all arms, munitions and material of war, as well as all aircraft, assembled or dismantled, and every vessel of war.

2. This prohibition applies to contracts in process of execution.

3. The Government of Finland will keep the other Governments participating in this entente informed of all measures taken by it to give effect to the present declaration.

In your note No. 67, dated the 26th of this month, you have also called to my attention the advantages of an arrangement by which each participating Government should authorize its representative in a European capital to participate in the work of a Committee charged with collecting all information on the measures taken as well as to resolve practically the difficulties attaching to the agreed measures. On this subject, I hasten to inform you that the Government of Finland believes this arrangement very appropriate and that it thinks London might well be indicated as the seat of this Committee.

I have the honor, etc.

(Signed) A. HACKZELL.

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## II. DECLARATION BY THE GERMAN GOVERNMENT

(a) Note, dated 17th August, 1936

Berlin, August 17, 1936.

MR. AMBASSADOR,

In reply to the *note verable* of August 16 by which Your Excellency informed me today of the accord between the Government of France and the Government of His Britannic Majesty on the subject of the attitude to be adopted in regard to the events in Spain, I have the honor to inform you of the following in the name of the German Government:

Conforming with the declaration made by the French Government in the note of the Minister of Foreign Affairs of France to the Ambassador of His Britannic Majesty at Paris on the fifteenth of this month, the German Government, on its part, is ready,

1. To prohibit direct or indirect exportation, re-exportation and transit, to a destination in Spain, the Spanish possessions and the Spanish zone of Morocco, of arms, munitions and material of war as well as aircraft, assembled or dismantled, and vessels of war;
2. To extend this prohibition to all contracts in process of execution;
3. To inform the other interested Governments of all measures that it takes to assure the execution of this prohibition.

The German Government makes the application of the measures indicated above depend on the following conditions:

(a) The Spanish Government must set at liberty the German transport airplane which is still held at Madrid;

(b) Besides the Governments mentioned in the note of the Minister of Foreign Affairs of France on the 15th of this month, the Governments of the other States which possess, in appreciable quantity, industries capable of producing the articles cited by the prohibition, must likewise contract the same engagement and this engagement must be applied to delivery by individuals or by private societies.

In order to permit it to establish whether the preliminary conditions expressed in paragraph (b) are fulfilled, the German Government will be grateful to the French Government for informing it which are the other Governments, besides the Government of His Britannic Majesty, which have already adhered or have yet to adhere to the declaration of the French Government.

In addition, the German Government must observe that it would be, in its opinion, eminently desirable that the interested Governments extend the measures which they will take to the prohibition of departure from their territory of volunteers who might wish to participate in the conflict existing in the regions concerned.

I have the honor, etc.

(Signed) NEURATH.

(b) Note, dated 24th August, 1936.

MR. AMBASSADOR,

Berlin, August 24, 1936.

Referring to the letter that the Minister of Foreign Affairs, Mr. von Neurath, addressed to you on the 17th of this month on the subject of the attitude to be observed in regard to the events in Spain, I have the honor, in the name of the German Government, to communicate to Your Excellency the following:

The German Government has learned with satisfaction that all the other interested Governments have adhered to the declaration proposed by the French Government. It has, in consequence, decided to put into force immediately, in so far as concerns Germany, the measures provided by that declaration. If it has made this decision, although the parleys in which it has engaged with the Spanish Government on the subject of restitution of the German transport airplane have not led to a satisfactory conclusion of the matter, it is because it is inspired by the desire to do all that is within its power to hasten conclusion of the proposed international accord. Moreover, it cherishes the hope that the other Governments which have not done so will now set up the regulations necessary to assure effective execution of the agreed measures.

I have the honor, etc.

(Signed) DICKHOFF.

## 12. DECLARATION BY THE GREEK GOVERNMENT

MR. CHARGÉ D'AFFAIRES,

Athens, August 27, 1936.

In reply to your communication No. 158, dated August 27, 1936, and confirming the adhesion in principle of the Royal Hellenic Government to the proposition of non-intervention in the internal affairs of Spain, in which the French Government has taken the initiative, I have the honor to make to you the following declarations:

The Hellenic Government, deploring the tragic events of which Spain is the theatre, resolved to abstain from all interference, direct or indirect, in the internal affairs of that country, animated by the desire to avoid every complication which might prejudice maintenance of good relations between nations, declares the following:

1. It prohibits, in so far as it is concerned, direct or indirect exportation, re-exportation and transit, to a destination in Spain, the Spanish possessions and the Spanish zone of Morocco, of all arms, munitions and material of war as well as all aircraft, assembled or dismantled, and all vessels of war.

2. This prohibition applies to contracts in process of execution.

3. The Royal Government will keep the other Governments participating in this entente informed of all measures taken by it to give effect to the present declaration.

I have the honor, etc.

(Signed) METAXAS.

## 13. DECLARATION BY THE HUNGARIAN GOVERNMENT

Budapest, August 31, 1936.

MR. MINISTER,

By the *note verbale* which the Royal Minister of Foreign Affairs of Hungary has the 21st instant under No. 2733 addressed to the Legation of France, the latter has been informed that the Hungarian Government gives its adhesion in principle to the project of a declaration of non-intervention in the internal affairs of Spain, in which the Government of the Republic has taken the initiative.

On this occasion the Hungarian Government, having reserved to itself the right to specify subsequently its attitude concerning the details, I have the honor to inform you herewith, in reply also to the note which Your Excellency addressed to me the 25th instant under No. 19, that the Hungarian Government, in conformity with the terms of the project of declaration above mentioned, engages:

1. To prohibit, in so far as it is concerned, direct or indirect exportation, re-exportation and transit, to a destination in Spain, the Spanish possessions or the Spanish zone of Morocco, of all arms, munitions and material of war, as well as all aircraft assembled or dismantled, and all vessels of war;

2. To apply this prohibition to contracts in process of execution;

3. To inform the other Governments participating in this agreement of all measures taken by it to give effect to the present declaration.

I have, nevertheless, to add that the project of declaration presented by the French Government as well as the texts of the notes exchanged in the question between the Government of the Republic and the Royal Government making mention also of "all indirect interference" in the internal affairs of Spain, is on the supposition that all the interested Powers will fall into agreement on the definition of "indirect" non-intervention, that the Government of Hungary henceforth accepts the project of declaration.

I have the honor, furthermore, to inform Your Excellency that the Hungarian Government declares itself to be in accord with the suggestion of the French Government in holding that a Committee of representatives of each State which has subscribed to the declaration should be charged with the task indicated in the note of Your Excellency and that the Committee should meet at London.

Lastly, permit me to communicate to Your Excellency that I have no objection to the publication of the formal declaration of the Hungarian Government when the French Government receives it.

I have the honor, etc.

(Signed) KANYA.

## 14. DECLARATION BY THE IRISH FREE STATE GOVERNMENT

August 25, 1936.

MR. MINISTER,

Confirming the adhesion in principle of the Government of Saorstat Eireann to the proposal of non-intervention in the internal affairs of Spain

in which the French Government has taken the initiative, I have the honor to make to you the following declarations:

The Government of Saorstát Éireann, deploring the tragic events of which Spain is the theatre, resolved to abstain rigorously from all interference, direct or indirect, in the internal affairs of that country, inspired by the desire to avoid every complication which might prejudice maintenance of good relations between nations, declares the following:

1. The Government of Saorstát Éireann prohibits, in so far as it is concerned, direct or indirect exportation, re-exportation and transit, to a destination in Spain, the Spanish possessions or the Spanish zone of Morocco, of all arms, munitions and material of war, as well as all aircraft, assembled or dismantled, and all vessels of war.

2. This prohibition applies to contracts in process of execution.

3. The Government of Saorstát Éireann will keep the other Governments participating in this entente informed of all measures taken by it to give effect to the present declaration which goes into effect immediately.

I hasten to inform you that all importation of arms or munitions is subject, in Saorstát Éireann, to the consent of the Minister of Justice, and that the Government of Saorstát Éireann has decided not to permit, in the present circumstances, direct or indirect exportation of the articles mentioned in the present declaration to a destination in Spain, the Spanish possessions or the Spanish zone of Morocco.

I have the honor, etc.

(Signed) SEAN MURPHY.

#### 15. DECLARATION BY THE ITALIAN GOVERNMENT

Rome, August 21, 1936.

MR. AMBASSADOR,

I have the honor to refer to the conversations I have had with Your Excellency relating to the question of "non-intervention" in Spanish affairs, and also to the observations that I made at the first appearance of the subject, and the limits which "non-intervention" should have to be truly effective. Following these conversations and with the intention of doing, in so far as my Government is concerned, everything of a nature to facilitate and hasten the conclusion of an accord, I have the honor to inform Your Excellency that the Italian Government, in conformity with the stipulations proposed by the French Government, engages:

1. To prohibit, in so far as it is concerned, direct or indirect exportation, re-exportation and transit, to a destination in Spain, the Spanish possessions or the Spanish zone of Morocco, of all arms, munitions and material of war, as well as aircraft, assembled or dismantled, and ships of war;

2. To apply this prohibition to all contracts in process of execution;

3. To keep itself in touch with the other interested States for reciprocal communication of all measures taken with a view to giving effect to this declaration.

For its part, the Italian Government will put this declaration into effect as soon as the French, English, Portuguese and German Governments and the Government of the U.S.S.R. likewise shall have adhered to it.

The French proposal having moreover spoken of "indirect interference" without specifying to what it refers, the Italian Government must specify that it interprets this "indirect" interference in a sense that it is not admissible, in a country adhering to the accord, to permit public subscriptions or the enlistment of volunteers in favor of one or the other of the parties in conflict. The Italian Government, in accepting adherence to "direct" non-intervention, has the honor, in consequence, to maintain its observations concerning "indirect" non-intervention. Furthermore, there being in Europe other important States which are producers of arms, in addition to those to which the French project refers, it seems essential to the Italian Government that the engagement of "non-intervention" be likewise taken by these said States.

I have the honor, etc.

(Signed) CIANO.

#### 16. DECLARATION BY THE LATVIAN GOVERNMENT

Riga, August 27, 1936.

MR. MINISTER,

As result of the collective note of the Committee, dated August 19, and communications contained in the *notes verbales* of the Legation of France and in the letter which Your Excellency addressed to me the 24th of August, I have the honor to declare to you the following:

1. The Government of the Republic prohibits, in so far as it is concerned, direct or indirect exportation, re-exportation and transit, to a destination in Spain, the Spanish possessions or the Spanish zone of Morocco, of all arms, munitions and material of war as well as all aircraft, assembled or dismantled, and all vessels of war;

2. This prohibition applies to contracts in process of execution;

3. The Government of the Republic will keep the other Governments participating in this entente informed of all measures taken by it to give effect to the present declaration.

At the same time I hasten to give herewith the consent of the Latvian Government to the publication of all declarations which have been communicated to me as well as the declaration of the Latvian Government in this matter.

I am likewise prepared to accept the suggestion of the French Government to give the representative of Latvia in a European capital authority to participate in the work of a committee which will be charged with:

1. Collecting all information on the measures taken;
2. Resolving in practice the particular points attaching to application of the arrangements.



For this purpose the Latvian Government will give the necessary authorization to His Excellency Mr. Charles Zarine, Envoy Extraordinary and Minister Plenipotentiary of Latvia to the Court of St. James.

I have the honor, etc.

(Signed) MUNTERS.

#### 17. DECLARATION BY THE LITHUANIAN GOVERNMENT

Kaunas, August 28, 1936.

MR. CHARGÉ D'AFFAIRES,

Referring to the letter which you so kindly addressed to me dated the 26th of this month on the subject of the French proposal on non-interference in Spanish affairs, and confirming the verbal adhesion given by the Lithuanian Government to the said proposal on the 11th of this month, I have the honor to make to you the following declaration:

The Government of the Republic of Lithuania, deploring the tragic events of which Spain is the theatre, resolved to abstain rigorously from all interference, direct or indirect, in the internal affairs of that country, inspired by the desire to avoid every complication which might prejudice maintenance of good relations between nations, declares the following:

1. The Lithuanian Government prohibits, in so far as it is concerned, direct or indirect exportation, re-exportation and transit, to a destination in Spain, the Spanish possessions or the zone of Morocco, of all arms, munitions and material of war.

2. This prohibition applies to contracts in process of execution.

3. The Lithuanian Government will keep the other Governments participating in this entente informed of all measures taken by it to give effect to the present declaration.

By the decision of the Council of Ministers, adopted the 27th of this month, the Lithuanian Government has made exportation of the articles mentioned under number 1 of the declaration subject to a system of licenses and has decided not to grant any license for exporting the said articles to a destination in Spain, the Spanish possessions or the zone of Morocco.

I wish to inform you likewise that no shipment of the said articles from Lithuania to the aforementioned destination has been effected before the decision of the 27th of this month.

The Lithuanian Government accepts participation in the committee charged with collecting all information on the envisaged measures as well as examining and resolving in practice the particular points attaching to the application of the agreed arrangements, and designates M. B. Balutis, its Minister at London, to represent it there. When this is impossible, M. Balutis will be replaced upon the said committee by M. H. Rabinavicius, Counselor of the Lithuanian Legation at London.

The Lithuanian Government does not see anything objectionable in the

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publication of all declarations on the subject in question of which the French Government is informed.

I have the honor, etc.

(Signed) LOZORAITIS.

## 18. DECLARATION BY THE LUXEMBURG GOVERNMENT

Luxemburg, September 2, 1936.

MR. MINISTER,

In reply to your letter of August 27, I have the honor to inform Your Excellency that the Grand-Ducal Government adheres to the proposal of the French Government to prohibit the exportation of arms to a destination in Spain. The Grand-Ducal Government has no objection to the publication of its adhesion.

A Grand-Ducal decree of October 29, 1935, having made the exportation and transit of arms and material of war subject to a special authorization, the Grand-Ducal Government will refuse every authorization which may be requested for the exportation of arms to a destination in Spain.

The Grand-Ducal Government has no objection to the choice of London as the place of meeting of a Committee which would have as its duty the study of means of applying the agreed measures.

I have the honor, etc.

(Signed) J. BECH.

## 19. DECLARATION BY THE NETHERLANDS GOVERNMENT

The Hague, August 24, 1936.

MR. CHARGÉ D'AFFAIRES,

I have the honor to inform you that the Government of The Netherlands, Deploing the tragic events of which Spain is the theatre;

Animated by the desire to avoid all complications which might prejudice maintenance of good relations between nations;

Realizing, under the circumstances, the usefulness of a common attitude in regard to the exceptional situation in Spain;

Having seen the declarations exchanged between the British and French Governments the past 15th of August, stating the desire of these Governments to prohibit direct or indirect exportation, re-exportation and transit, to a destination in Spain, the Spanish possessions or the Spanish zone of Morocco, of all arms, munitions and material of war as well as all aircraft, assembled or dismantled, and all vessels of war,

Declares that it has taken, in pursuit of the same ends, the necessary steps to ensure that licenses which are required in accordance with Netherlands' legislation for the exportation and transit of firearms, or of constituent parts of firearms, as well as munitions and their constituent parts, as is exacted by the law of June 7, 1919, amended by the laws of June 29, 1925, and July 8, 1932, be refused if these articles are destined for Spain. This prohibition applies likewise to the request for licenses for exportation or transit of the

said articles in fulfillment of contracts already concluded or in process of execution.

In the matter of airplanes, the Netherlands Government, which does not authorize the sale of airplanes from the stock of the State or of the Royal Company for Aerial Navigation for The Netherlands and Their Colonies, for export to Spain, will continue to use the means at its disposal to prevent sale of Netherlands' airplanes to a destination in Spain.

The Government of The Netherlands has accepted these arrangements in the expectation that the other interested Governments will apply analogous measures.

I have the honor, etc.

(Signed) SNOUCK HURGRANJE.

20. DECLARATION BY THE NORWEGIAN GOVERNMENT

Oslo, August 26, 1936.

MR. MINISTER,

By a *note verbale* dated the 18th of this month, the Legation of France has kindly communicated to this Minister the text of letters exchanged between the Government of France and the Ambassador of the Government of Great Britain at Paris containing a declaration on Spanish affairs, inspired by the project which has already been submitted to all European Governments.

Referring to the said letter and to our conversation, I have the honor to make to you the following declarations:

The Norwegian Government, deploring the tragic events of which Spain is the theatre, resolved to abstain from all interference, direct or indirect, in the internal affairs of that country, and animated by the desire to avoid every complication which might prejudice maintenance of good relations between nations, declares the following:

1. The Norwegian Government prohibits, in so far as it is concerned, direct or indirect exportation, re-exportation and transit, to a destination in Spain, the Spanish possessions and the Spanish zone of Morocco, of all arms, munitions and material of war, all aircraft, assembled or dismantled, and all vessels of war.

2. This prohibition applies to contracts in process of execution.

3. The Norwegian Government will keep the Governments participating in this entente informed of all measures taken by it to give effect to the present declaration.

The Norwegian Government, in so far as it is concerned, will put this declaration into effect as soon as the German, British, French, Italian, Portuguese and Soviet Governments shall likewise have adhered to it.

I have the honor, etc.

(Signed) T. LIE,  
*Minister of Justice, Acting Minister  
of Foreign Affairs.*

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## 21. DECLARATION BY THE POLISH GOVERNMENT

Warsaw, August 27, 1936.

MR. CHARGÉ D'AFFAIRES,

Referring to the *aide-mémoire* which was transmitted to the Embassy of France dated August 22, I have the honor to confirm to you the following:

The arrangements which the Polish Government has taken since the beginning of the tragic events in Spain, by virtue of the powers conferred upon the President of the Republic, by the ordinance of October 27, 1932, relative to the control of commerce in arms, munitions, etc., being in conformity with the points enumerated in the project of declaration sent by the Ambassador, the seventh of this month, to the Ministry of Foreign Affairs and which stipulated especially:

1. The prohibition of direct or indirect exportation, re-exportation and transit, to a destination in Spain, the Spanish possessions or the Spanish zone of Morocco, of all arms, munitions and material of war, as well as all aircraft, assembled or dismantled and all vessels of war.

2. The application of this prohibition to contracts in process of execution.

3. The immediate application of measures to this effect by interested Governments.

The Polish Government, although it has spontaneously taken the necessary steps, as follows from the above statement, considers, nevertheless, that it will be bound by the engagements implied in the present negotiation to the same extent as are all the other interested Governments.

So far as concerns an international exchange of views on details of measures which are taken in this sense, the Polish Government declares itself ready to participate on the condition that all other interested States likewise take part.

I must, furthermore, state that in the opinion of the Polish Government this problem is an exceptional case and should not be considered a precedent in the realm of international law.

I have the honor, etc.

(For the Minister), R. DEBICKI.

#### REPLY OF THE PORTUGUESE GOVERNMENT TO THE FRENCH PROPOSAL OF NON-INTERVENTION IN THE AFFAIRS OF SPAIN <sup>3</sup>

1. In consideration of the conviction of the Governments of His Britannic Majesty and of the French Republic that an accord of non-intervention in the civil war in Spain may contribute towards the ending of the strife which is staining Spain with blood and, even more, towards removing from Europe the menace of grave international complications, the Portuguese Government, not wishing to take the responsibility of hindering or retarding the con-

<sup>3</sup> Portugal, *Secrétariat de la Propagande Nationale. Bulletin de Renseignements Politiques, Economiques et Littéraires*. No. 18/19, November 30, 1936. Note—This document is not contained in the *Non-Intervention Committee Document N.I.S (36) 2.*, but is reproduced here because of its bearing upon the Declaration which follows.

clusion of an accord which could have, according to the aforesaid opinions, such fortunate effects, gives its adhesion in principle to the idea which governed that proposal.

2. In doing so, however, it cannot, in the interest of the sincerity of international relations, fail to make some observations and reservations of which the first is as follows:

In accepting the discussion of a proposal of so broad a portent, the Portuguese Government starts from the assumption that the accord, once made, must be fulfilled with absolute rigor: it understands that the non-fulfillment of clauses which are to be established, or negligent observance, will represent a serious cause of mutual mistrust and of international disunity.

The Portuguese Government thus wishes to emphasize that, in its opinion, the application of that accord must be surrounded with indispensable guarantees in order that nations may believe in the perfect equity and impartiality of the governments, and that the results achieved may comply in truth with the intentions of the signatories.

Not only for that reason, but also because the passions which have been unchained in certain countries in connection with the civil war in Spain render singularly difficult the fulfillment of that accord, is it indispensable to observe the nicest balancing in the application of the clauses of the said accord.

3. The proposal presented by the French Government concerns above all the countries which manufacture arms and munitions or which dispose of important stocks. Such is not the case of the Portuguese Government nor of Portuguese industries.

The adhesion of the Portuguese Government can have interest only in relation to transit, but it is very evident that if the countries producing arms and munitions sell nothing to the parties in conflict, the rôle of thoroughfare cannot be played, even hypothetically, by the Portuguese territory.

The Portuguese Government understands then, that it is upon the sale of arms and of munitions in producing countries that the most severe control must be exercised.

4. The Portuguese Government particularly draws the attention of the Governments interested in the proposed accord to the dangers which the Spanish civil war implies for Portugal. No other country finds itself in a similar situation; the outcome of the civil war cannot create for any other government such responsibilities for its own defense as those which that defense may at any moment create for the Portuguese Government.

Examination of these facts obliges me to declare that the adhesion in principle given previously does not fetter in any way the liberty of evaluating circumstances and the freedom of action of the Portuguese Government, in the event that it should have the unavoidable duty of defending internal peace, safeguarding life, property and liberty of its citizens, and of ensuring national integrity and independence.

5. I must emphasize in this connection that upon discussion of the text

of the accord, the Portuguese Government will present such suggestions as it considers necessary.

6. Finally, as one particularly interested in the events which are taking place in Spain, the Portuguese Government cannot fail to call the attention of the countries interested in the accord to the conditions of extreme violence in which the civil struggle in a neighboring country is taking its course. In doing so, it obeys the imperious command of its conscience, in the name of the sacred principles of humanity, in the name of the fraternal friendship which unites the Portuguese people with the Spanish people, and because the Portuguese Government believes that in this civil war it is not only the fate of Spain which is involved.

It is irrefutably known today that communist and anarchist militiamen maintain, at certain points, a methodical reign of terror; they are destroying the great and secular patrimony, public and private, of Spain, and the riches accumulated during several generations as though they were obeying a pre-conceived plan. They have assassinated, *en masse*, with cold premeditation, in a great number of places, persons who belong to social classes which they consider undesirable, depriving Spain, in many cases, of noble servants and of some of its men of greatest value.

It seems to the Portuguese Government that a condemnation of such acts of social transformation might well figure beside the accord of non-intervention which is proposed to it.

## 22. DECLARATION BY THE PORTUGUESE GOVERNMENT

Lisbon, August 21, 1936.

MR. MINISTER,

The Governments of His Britannic Majesty and of the French Republic have affirmed to the Portuguese Government that the conclusion of an accord of non-intervention in the civil war in Spain might avoid grave international complications and contribute to a shortening of the duration of hostilities. Taking the importance of that declaration into consideration, and not wishing to take the responsibility for retarding or impeding the creation of a state of affairs from which desirable results might come, the Portuguese Government has given its adhesion in principle to the idea that had directed the proposition which was made to it. The object of the present note is to specify the terms in which the Portuguese Government believes itself obligated to realize the thought of non-intervention.

2. The Portuguese Government deplors the events which are taking place in Spain and it formally censures the barbarous treatment of people by the communist and anarchist troops in areas which they control.

3. The Portuguese Government resolves to abstain from all interference, direct or indirect, in affairs of Spain until the re-establishment of normal conditions of authority in that country.

So far as concerns this decision, the Portuguese Government expressly

makes the reservation that acts to which it may be forced by the circumstances for the following purposes cannot be construed as interference, direct or indirect:

(a) Defense of internal public order, security of life, property and liberty of Portuguese citizens, the safeguarding of territorial integrity and national security;

(b) Application of conventions or international decisions caused by circumstances of the war;

(c) Mediation between the parties in conflict, if conditions at some time permit;

(d) The defense against all régimes of social subversion which might be established in Spain, if the necessity of safeguarding western civilization requires such a defense;

(e) The maintenance of relations with central or local authorities which control, in fact, the government or administration in Spanish territory;

(f) Recognition of the belligerency of the forces in conflict or of a new Government; the modification of conditions of diplomatic or consular representation.

4. Animated by the desire to avoid international complications which might result amongst foreign countries or political parties from intervention in the civil war, the Portuguese Government engages to prohibit, in so far as it is concerned, direct or indirect exportation, re-exportation or transit, to a destination in Spain, the Spanish possessions or the Spanish zone of Morocco, of arms, munitions and material of war, as well as aircraft, assembled or dismantled, and vessels of war.

5. The Portuguese Government is of the opinion that the previous decisions and engagements cannot be of advantage unless they are rigorously observed, all Governments lending their assistance so far as possible to that end in so far as concerns their respective obligations.

In the desire to contribute to the assurance of that rigorous and impartial execution, the Portuguese Government engages to inform the other interested Government, or Governments, of all facts that one or other of the parties in conflict present to it by way of the Government of Madrid or the Junta of National Defense of Spain whose seat now is at Burgos (provided that these facts be accompanied by proofs judged sufficient by the Portuguese Government) on the subject of acts of exportation or transit of arms, munitions, aircraft and vessels which might be considered violations of the engagements assumed by the different Governments in the present note.

6. Believing, moreover, that the supervision mentioned in the preceding paragraph is insufficient, the Portuguese Government hopes that the French Government, which has taken the initiative in the present accord, will study and propose more active formulae for control of enterprises exporting arms, munitions, aircraft and vessels of war.

7. It expects also from all the countries the collective action necessary

to avoid violation by one or the other of the parties in conflict of the conventions on the use of asphyxiating gases signed by the Spanish Government.

8. It remains understood that the situation of existing internal war and of these engagements does not give ships of one or the other of the parties rights other, or more extensive, than those which attach to vessels of war in time of peace.

9. The Government of the Portuguese Republic will communicate to the other interested Governments all the measures taken to apply the decision of number 4 of this note; it will consider this decision to be in effect as soon as Germany, Italy, and the French, British and Russian Governments hold themselves obligated to apply it and so far as all observe it effectively.

10. The Portuguese Government thinks the two following facts contrary to the spirit of declaration number 3 of this note:

(a) Consent to the enrollment of volunteers for the forces in conflict, even if the enlistments are secured indirectly;

(b) The opening of subscriptions for continuation of the war or the sending of publicly collected sums for that purpose.

Consent to practice of these acts by one of the Governments which may adhere to the said declaration will release the Portuguese Government from the obligations assumed above.

I have the honor, etc.

(Signed) ARMINDO MONTEIRO.

## 23. DECLARATION BY THE ROUMANIAN GOVERNMENT

Bucharest, August 18, 1936.

MR. CHARGÉ D'AFFAIRES,

The negotiations pursued between the Royal Government of Roumania and the Government of the French Republic having given proof of their accord on a common attitude to be observed in regard to the situation in Spain, I have the honor to make to you the following declarations in conformity with the proposal of which the other European Governments are informed by the initiative of the French Government:

The Royal Government of Roumania, deploring the tragic events of which Spain is the theatre;

Resolved to abstain from all interference in the internal affairs of that country;

Animated by the desire to avoid every complication which might prejudice maintenance of good relations between nations,

Declares the following:

1. The Roumanian Government prohibits, in so far as it is concerned, direct or indirect exportation, re-exportation and transit, to a destination in Spain, the Spanish possessions or the Spanish zone of Morocco, of every arm, munition and material of war as well as every aircraft, assembled or dismantled, and every vessel of war.



2. This prohibition applies to contracts in process of execution.
3. The present declaration goes into effect immediately.

The Roumanian Government will inform of all measures taken to give effect to this declaration, the Governments which, having adhered to the French declaration, also keep the Roumanian Government informed of the measures which they have taken as a result of this engagement.

I must add that this adhesion of the Roumanian Government to the declaration of non-interference [*non-immixtion*] in the affairs of Spain is given for the exceptional circumstances, which constitute a particular case which cannot create a precedent and that it does not imply, for the Roumanian Government, the obligation of recognizing the principle that a legal Government may not obtain, upon its request, aid from another Government against a rebellion.

I have the honor, etc.

(For the Minister),  
(Signed) MICHEL ARION.

#### 24. DECLARATION BY THE SWEDISH GOVERNMENT

Stockholm, August 20, 1936.

MR. MINISTER,

Confirming the adhesion in principle of the Royal Government to the proposal of non-intervention in the internal affairs of Spain, in which the French Government has taken the initiative, and carrying out the desire which you kindly expressed to me in the name of your Government, by your letter of the 19th of this month, I have the honor to make to you the following declarations:

The Royal Government,

Deploring the tragic events of which Spain is the theatre;

Resolved to abstain rigorously from all interference, direct or indirect, in the internal affairs of that country;

Animated by the desire to avoid every complication which might prejudice maintenance of good relations between nations,

Declares the following:

1. The Royal Government prohibits, in so far as it is concerned, the direct or indirect exportation, re-exportation and transit, to a destination in Spain, the Spanish possessions or the Spanish zone of Morocco, of all arms, munitions and material of war as well as all aircraft, assembled or dismantled, and every vessel of war.

2. This prohibition applies to contracts in process of execution.

3. The Royal Government will keep the other Governments participating in this entente informed of all measures taken by it to give effect to the present declaration.

The Royal Government, in so far as it is concerned, will put this declaration into effect as soon as the German Government, the Government of His

## THE SPANISH CIVIL STRIFE

Britannic Majesty, the French Government, the Italian Government, the Portuguese Government and the Government of the U.S.S.R. shall likewise have adhered to it.

I have the honor, etc.

(For the Minister),  
The Secretary-General,  
(Signed) CHRISTIAN GÜNTHER.

## 25. DECLARATION BY THE TURKISH GOVERNMENT

Ankara, August 28, 1936.

MR. CHARGÉ D'AFFAIRES,

Confirming the declaration that I had the honor to make to you verbally, I hasten to inform you that the Government of the Republic, firmly resolved not to interfere in the internal affairs of Spain, adheres to the project proposed by the French Government and declares the following:

1. The Government of the Republic, in so far as it is concerned, prohibits direct or indirect exportation, re-exportation and transit, to a destination in Spain, the Spanish possessions or the zone of Morocco, of all arms, munitions and material of war as well as all aircraft, assembled or dismantled, and all vessels of war.

2. This prohibition applies to contracts in process of execution.

3. The Turkish Government will keep other Governments participating in this entente informed of every measure taken by it to give effect to the present declaration.

The Government of the Republic, which puts into effect from date of this day the arrangements contained in the three paragraphs above, wishes to specify, however, that its acceptance, motivated by its anxiety for peace and tranquillity in Europe, cannot constitute a precedent nor an established rule so far as concerns the aid to be furnished to a legal Government which might request it.

I have the honor, etc.

(Signed) DOCTOR RUCHTU ARAS.

## 26. DECLARATION BY THE U.S.S.R. GOVERNMENT

Moscow, August 23, 1936.

MR. CHARGÉ D'AFFAIRES,

Referring to the conversations which have taken place on the subject of the line of conduct to be adopted in regard to the situation in Spain, I have the honor to communicate to you the following:

The Government of the U.S.S.R., deploring the tragic events of which Spain is the theatre;

Resolved to abstain rigorously from all interference, direct or indirect, in the internal affairs of that country;

Animated by the desire to avoid every complication which might prejudice maintenance of good relations between nations,

Declares the following:

1. The Government of the U.S.S.R. prohibits, in so far as it is concerned, direct or indirect exportation, re-exportation and transit, to a destination in Spain, the Spanish possessions or the Spanish zone of Morocco, of all arms, munitions, and material of war as well as all aircraft, assembled or dismantled, and all vessels of war.

2. This prohibition applies to contracts in process of execution.

3. The Government of the U.S.S.R. will keep the other Governments participating in this entente informed of all measures taken by it to give effect to the present declaration.

The Government of the U.S.S.R., in so far as it is concerned, will put this declaration into effect as soon as, in addition to the French and British Governments who on the 15th of August of this year exchanged notes on this subject, the Italian, German, and Portuguese Governments shall likewise have adhered to the declaration.

I have the honor, etc.

(Signed) LITVINOFF.

#### 27. DECLARATION BY THE YUGOSLAV GOVERNMENT

Belgrade, August 23, 1936.

MR. MINISTER,

I have the honor to inform you that the Government of the Kingdom of Yugoslavia has examined with all necessary attention the project of the declaration on Spanish affairs which the Government of the French Republic has kindly transmitted to it through the Legation of France at Belgrade.

Deploing the tragic events of which Spain is the theatre, and animated by the same feeling which has inspired the Government of the Republic in its desire to abstain rigorously from all interference, direct or indirect, in the internal affairs of that country, as well as to avoid every complication which might prejudice maintenance of good relations between nations, the Royal Government is ready, in principle, to adhere to the declaration of non-interference in Spanish affairs, according to the text which has been communicated to it by courtesy of the Legation of France at Belgrade.

The Royal Government is ready to prohibit, in so far as it is concerned, direct or indirect exportation, re-exportation and transit, to a destination in Spain, the Spanish possessions or the Spanish zone of Morocco, of all arms, munitions, and materials of war, as well as all aircraft, assembled or dismantled, and all vessels of war. This prohibition applies likewise to contracts in process of execution.

The Royal Government will keep other Governments participating in this entente informed of all measures taken by it to give effect to the said declaration.

Entrance into force in the Kingdom of Yugoslavia of the embargo in question being subjected, by the provisions of Yugoslavian legislation, to a

decree of the Council of Ministers, the Royal Government will take, at the opportune moment, all measures necessary to that end.

Considering that the action of the Government of the Republic directed toward the securing of adhesion of all interested Governments to the rules of conduct enunciated above has been motivated by exceptional circumstances, the Royal Government wishes to emphasize that this declaration also possesses an exceptional character and cannot constitute a precedent from which can be drawn, even implicitly, recognition of the principle that a Government cannot lend to a legal Government, on request of the latter, aid against a rebellion.

I have the honor, etc.

(Signed) STOYADINOVITCH.

B. DECLARATION BY THE SWISS GOVERNMENT IN REGARD TO ITS  
ATTITUDE TOWARDS THE SITUATION IN SPAIN

COMMUNIQUE ISSUED TO THE PRESS BY THE SWISS GOVERNMENT ON  
14TH AUGUST, 1936

Berne, August 14, 1936.

The Ambassador of France at Berne, upon the order of his Government, has communicated to the Federal Council the project of a common declaration of non-interference in the affairs of Spain.

The Federal Council has charged the Political Department to thank the Government of the French Republic, through the intermediary of the Ambassador of France at Berne, for that friendly act of deference. The Federal Council has made this very day several independent decisions in conformity with a policy of non-interference, but for reasons arising from the permanent neutrality of the Confederation, it has no intention of participating in a common declaration.

## APPENDIX II

### NOTE OF THE SPANISH GOVERNMENT TO THE POWERS PARTICIPATING IN THE NON-INTERVENTION ACCORD, SEPTEMBER 15, 1936<sup>1</sup>

*(Translation)*

I have the honor of bringing to the knowledge of Your Excellency the following, with the request that it be transmitted to the Government which you so worthily represent:

1. By an action of today, the Government of Spain has directed to the Governments of Germany, Italy, and Portugal the Notes which I have the honor to inclose.<sup>2</sup> The facts contained in them demonstrate that the "Non-Intervention" Agreement is changed in practice to a blockade of the legitimate Government. Even though contracts for the acquisition of arms by the Spanish Government, made long before the conclusion of the "Non-Intervention" Agreement have been invalidated, the rebels continue, even after the signing of the said Agreement by the Powers, to receive from abroad all classes of war materials.

2. The official assertions of the interventionist countries in the sense of a rigorous compliance in the "Non-Intervention" Agreement are contradicted by their actions. It would be enough to record the declarations of one of the interventionist Powers, which did not hesitate to hold that certain aviators, detained in consequence of a forced landing and belonging to the active service of her military aviation, were Spanish aviators.

On the other hand, the attitude assumed in the Committee of Control of London by certain Powers has been in this sense sufficiently significant, giving rise to the fact that from distinct sectors there has been insistent demand that on the application of the Agreement of "Non-Intervention" those who have subscribed to it should pronounce with unequivocal clearness.

3. Any impartial observer, and in this coincide the most authoritative opinions given out outside of Spain during the first weeks of the rebellion, will recognize that the uprising of Spanish officialdom, supported exclusively by feudal remnants of society and lacking absolutely any popular support, would have been choked in its embryonic stage by the force of the immense majority of the Spanish people if the rebels, on an increasing scale, had not enjoyed the armed aid of Germany and Italy and the cooperation of other known secret agents.

<sup>1</sup> Circulated in mimeographed form without number by the Secretariat of the League of Nations.

<sup>2</sup> Texts not printed or available.

In their inability to enlist in the rebellion really Spanish contingents, the rebel generals, besides assuring themselves of this foreign aid, had recourse to the recruitment of mercenary Moroccan troops, mobilized against the Spanish people precisely because of their fame for cruelty and their sanguinary renown, a proceeding which by itself should have scandalized the civilized world.

It is difficult for anyone to deny that these acts, both as they concern the recruitment of Moroccan troops and as they affect the importation of materials of war in the Spanish Zone of Morocco, constitute a flagrant violation of the rules fixed in the Statutes in force since the Act of Algeciras of the French-Spanish Treaty of 1912. Thus it reveals the real attitude adopted by the Sultan.

4. Things have come to the point where the constitutional Government of Spain sees itself obliged to direct itself to the Government which Your Excellency so worthily represents, signatory of the "Non-Intervention" Agreement, asking whether it has taken account of the fact that the embargo upon the export of arms to a legitimate Government and the toleration of acts of direct intervention on the part of Italy and Germany in favor of the rebels is creating a very grave precedent in the international order, the initiation of a new era in Europe which permits certain States committed to a regime of force to impose with impunity, in the midst of international silence, their ideology and their conceptions of the State upon another country through the fomenting of internal civil war and providing armed help to the rebel group.

5. The Spanish Government, convinced that this Government will not wish to admit silently such a violation of Law and of international practices on the basis of a political system which would introduce in Europe the law of unbridled violence and would put world peace in grave danger, giving a death blow to the principle of collective security, requests the raising of the embargo established on the export of arms destined to the Spanish Government and a rigorous prohibition of the supplying of material of war to the rebels.

### APPENDIX III

## THE LEGISLATIVE AND OTHER MEASURES APPLIED BY THE PARTICIPATING GOVERNMENTS TO GIVE EFFECT TO THE DECLARATIONS REGARDING NON-INTERVENTION

### I

#### ALBANIA

MEMORANDUM OF THE MINISTRY OF FOREIGN AFFAIRS, POLITICAL DIVI-  
SION, TO THE LEGATION OF THE UNITED STATES AT TIRANA,  
JUNE 25, 1938<sup>1</sup>

In reply to note No. 23 of May 24, 1938, from the Legation of the United States of America, the Royal Ministry of Foreign Affairs has the honor to state the following:

1. In connection with the prohibition to export and to let pass through of war materials, on the basis of its adherence to the French Project-Convention for non-interference in Spanish affairs, the Royal Government issued orders to the local authorities not to permit the direct or indirect exportation or re-exportation or the transit to Spain or to the Morocco zone of any kind of guns, munitions, war materials, assembled or unassembled airplanes, and war vessels.

. . . The Royal Ministry of Foreign Affairs avails itself of this opportunity to renew to the Legation of the United States of America the assurances of its high consideration.

<sup>1</sup> Communicated to the author by the American Minister. It has not been possible to obtain a copy of the text of the above-mentioned order. According to the *Hemming Report*, this order, No. 7185 of Sept. 12, 1936, was transmitted by telegraph to the customs authorities, prefectures, frontier guard, and gendarmerie, and was based upon Article 364/b of the Customs Tariff. *British Parliamentary Paper*, Spain No. 2 (1936), Cmd. 5300 (hereafter cited as the *Hemming Report*), p. 9.

### 2

#### AUSTRIA

FEDERAL LAW OF JANUARY 17, 1928, CONCERNING THE PRODUCTION AS  
WELL AS THE IMPORTATION AND EXPORTATION OF  
IMPLEMENTS OF WAR<sup>1</sup>

(Translation)

The National Council has decided:

SECTION 1. The importation and exportation of implements of war of every kind (arms, ammunition and other implements), as well as their manufacture for exportation, is forbidden.

<sup>1</sup> *Bundesgesetzblatt für die Republik Österreich*, 1928, pp. 75-78.

SEC. 2. Implements of war may neither be produced for domestic use nor may they be stored or traded.

SEC. 3. The following products fall under the provisions of Sections 1 and 2, unless otherwise provided for in Section 7:

1. Guns and mine-throwers of every kind as well as their barrels and mountings; special accessories.

2. Projectiles and munitions for the weapons enumerated under No. 1.

3. (a) Machine guns of every kind and of all calibers as well as their mountings;

(b) Means of conveyance and special accessories for these weapons.

4. Rifles, short-rifles and carbines of all models which:

(a) Appertain to the arming or the defense of any state or may appertain to it, or

(b) Are equipped for the use of an ammunition employed by the Austrian armed forces, or

(c) No longer appertain to the arming or the defense of any state, but can still find military use and are destined for war purposes.

5. Projectiles and munitions for the weapons enumerated in Nos. 3(a) and 4.

6. Pistols and revolvers, automatic or equipped with self-loading mechanism, with a barrel length of over 98 cm. or with a caliber of over 8 mm.

7. Apparatus and machines destined for war purposes for the discharge or throwing of bombs, torpedoes, water-bombs and other kinds of projectiles.

8. Hand-grenades, rifle and mortar-grenades.

9. (a) Land mines;

(b) Bombs destined for war purposes.

10. Torpedo-tubes and apparatus appertaining to torpedo discharge mechanisms.

11. (a) Loadings for the torpedo discharge;

(b) Torpedoes and their special accessories.

12. Water-bombs, dragging explosive charges, drifting mines, and anchorable sea mines.

13. Cases for munitions and packing cases especially adapted for the transportation and the storing of implements of war.

14. Submarines, their periscopes and special equipment.

15. Superstructures as well as mechanical apparatus for marine artillery.

16. Munitions-lifting and loading apparatus for marine artillery.

17. Mechanical and electrical firing apparatus for marine artillery and torpedo weapons.

18. Apparatus for directing the fire of torpedo weapons.

19. Fixed or movable underwater net projections.

20. Armor-plate, armored turrets and artillery shields.

21. Tanks and armored vehicles.

22. (a) Lances and detachable bayonets;

(b) Sabres intended for war purposes.



23. (a) Vessels of every kind and size which are manifestly built or adapted for use as warships or as underwater conveyances of every kind, or parts thereof. Above-water commercial vessels of every kind and speed are not included hereunder, if they have not in peace time been provided with special apparatus which evidently serve for the use of a weapon (gun, mine, airplane, and so forth). The strengthening of decks in peace time is allowed, however, only on merchant vessels built, rebuilt or repaired on order or on account of a foreign government within the territory of the Bund and which vessels are destined immediately after building, rebuilding or repair for export.

(b) Boilers or main engines of every kind of motive power which manifestly are especially adapted for use on war vessels or submarines of every kind; specially adapted emergency engines which are destined manifestly for these boilers and main engines.

24. Apparatus for the shooting or expelling of gas or smoke, and flame-throwers destined for war purposes.

25. (a) Apparatus for the preparation and direction of fire;

(b) Devices for sighting, sights and range finders destined for purposes of war.

26. (a) Optical instruments, listening devices, and light measuring devices destined for purposes of war;

(b) Searchlights destined for purposes of war.

27. Wireless sets for sending and receiving, and their equipment destined for purposes of war, as well as all other apparatus destined for the same purpose which allow the transmission or reception or interception of dispatches or which allow the direction of army and navy units.

28. Blinding fire (for laying down smoke screens), signal rockets, illuminating rockets and signalling devices destined for purposes of war.

29. Articles which constitute a part of the particular or general military equipment, including steel helmets and gas masks, destined for purposes of war.

30. Trench implements especially adapted for purposes of war.

31. Barbed wire especially adapted for purposes of war, including stakes and other means of support.

32. Automobiles and trailers especially adapted for purposes of war.

33. Horse-drawn vehicles especially adapted for purposes of war.

34. Observation cars and observation ladders destined for purposes of war.

35. Special equipment for bridge rafts, as well as their pontoons destined for purposes of war.

36. Horse-drawn or automotive field-kitchens and their special equipment destined for purposes of war.

37. Rolling stock for rails especially adapted for purposes of war, as well as its special accessories and special devices for the conversion of usual railway materials into materials of war.

38. All training devices which serve the purpose of training the staff in all matters which concern artillery, employment of torpedoes, and water bombs, the laying of sea mines, direction of artillery fire and torpedo weapons, and methods of attack, as well as in matters concerned with range finders, searchlights, wireless sets and under-water signalling adapted for purposes of war.

39. Main parts of:

(a) Products mentioned in Nos. 1-10, 12, 13, 17-20, 22a, and of the gas masks mentioned in No. 29.

(b) Products mentioned in Nos. 11, 14-16, 23b, 25a, 32, 33, and of such products mentioned in 25b and 26a, which are specially adapted for purposes of war in so far as these main parts cannot be used in the same form for economic purposes.

40. (a) In accordance with Section 39, main parts of products mentioned in Nos. 1-3, 7-12, 15, 16, 20, 21, which have already been manufactured, in so far as they are manifestly destined for the making of weapons, munitions and war supplies or which have reached such a stage of manufacture that they can find use ordinarily only for war purposes;

(b) Main parts of the products mentioned in No. 4, in so far as they have reached such a stage of manufacture that they can be used only for purposes of war, and main parts of the products mentioned in No. 5, in so far as they have not gone through more than one process of cold drawing. [*Kaltziehverfahren.*]

41. Asphyxiating, poisonous or similar products for use in war; devices for the production, storage and usage of these products.

42. Nitrocellulose and nitroglycerine powder:

(a) Gun powder of any kind for cannon;

(b) Gun powder for rifles, in so far as it is obviously destined for purposes of war.

43. The following explosives which can form a constituent of war munitions of any kind:

(a) Nitro compounds with three or more nitro or nitric acid ester groups on one nucleus with exception of picric acid and trinitrotoluol;

(b) Pressed or fused picric acid;

(c) Picric acid in powder form destined for purposes of war;

(d) Trinitrotoluol, recrystallized or with a melting point above 79 degrees or in pressed or moulded charges;

(e) Trinitrotoluol in powder form destined for purposes of war;

(f) Mixtures of ammonium nitrate and nitro derivatives with more than 25% nitro derivatives.

44. Pressed nitrocellulose in charges for war purposes; nitrocellulose which is manifestly destined for war purposes; raw materials (mixtures of nitroglycerine and nitrocellulose) destined for war purposes.

45. Shells and explosives in so far as they are manifestly destined for purposes of war.

SEC. 4. Under the provisions of Section 2 come further the following products:

1. Guns destined for war purposes, so far as they do not come under Section 2, No. 4.

2. Ammunition for the weapons mentioned in Section 3, No. 6.

3. Power boilers and main engines of any kind which are manifestly destined for warships or submarines of any kind and auxiliary machines as well as their main parts manifestly destined for these boilers and main engines, in so far as these products do not already come under Section 3, No. 23b or 39b.

4. Vehicles with horse propulsion and their main parts destined for war purposes in so far as they do not already come under Section 3, No. 33 or 39b.

5. Main parts and semi-manufactures of the products mentioned in Section 3, Nos. 1-38, in so far as they do not already come under Section 3, Nos. 39 and 40.

6. Uniforms destined for purposes of war.

7. Equipment for draught animals, riding animals and pack animals, also main parts of such equipment destined for purposes of war.

8. (a) Special war machines: tools, patterns, forms, models, matrices (sections), dies, upper and lower parts of sockets specially adapted for the manufacture of war supplies;

(b) Specially assembled groups of machines and the braces appertaining thereto for the manufacture of war supplies.

SEC. 5.

1. Importation of the products mentioned in Section 4 is prohibited.

2. For export, these products may be manufactured and stored only in the usual commercial quantities required for the maintenance of a steady export trade.

3. The products mentioned in Section 4, Nos. 3, 7 and 8, may be manufactured for exportation only for the purpose of maintaining actual orders.

4. It is prohibited for factories which receive orders for the exportation of products designated in Section 4, No. 8, and for all other factories to make sketches for the manufacture of war supplies or to maintain special equipment for such sketches. Factories which receive such orders for exportation can, however, make sketches required for the execution of these orders, in so far as these orders do not appertain to the manufacture of war supplies which are prohibited to the Austrian armed forces by the Treaty of Saint-Germain-Laye.

SEC. 6. The provisions of Section 2 and of Section 5, sub-section 4, do not apply to the commissions (orders) issued from a department of the Austrian Government.

SEC. 7. Uncrystallized trinitrotoluol, hexanitrodiphenylamine, tetryl and trinitroresorcin may be produced for the manufacture of explosive shells for industrial purposes and may be exported in the amounts annually stipulated by the appropriate government Minister.

SEC. 8. Nitrocellulose powder and nitroglycerine powder, nitro compounds with three or more nitro or nitric acid ester groups on one nucleus, also phosgene, may be produced only in factories for which permission has been issued by the appropriate authority. Apart from the conditions set up on the basis of other provisions, permission can also be made to depend on the circumstance, that a definite number of apparatus may be used for their manufacture. Permission can be withdrawn whenever the conditions are not fulfilled or whenever the manufacture of the products in question does not take place within six months.

SEC. 9.

1. Whoever violates the provisions of this law will be punished by the authorities appropriate to the administration of military police, with imprisonment up to 6 months or with a fine up to 10,000 schillings.

2. Upon conviction, the destruction and dismantling of the products can be decreed, which (products) relate to the punishable action, whether they belong to the perpetrator or to an accomplice.

3. Destruction and dismantling must be decreed in so far as the following products come into question:

(1) Products mentioned in Section 3, Nos. 1-22a, 23-25a, 28, 32, 33, 42a, 43b, d, f, g, and in Section 4, No. 8a.

(2) Products mentioned in Section 3, Nos. 25b and 26, in so far as they are especially adapted for purposes of war.

(3) Main parts mentioned in Section 3, No. 39.

(4) According to Section 3, No. 39, main parts of the products mentioned in Section 3, Nos. 1-5, 7-12, 15, 16, 20, 21, already manufactured, in so far as they have reached such a stage of manufacture that they can ordinarily find use only for purposes of war.

4. Groups of machines specially co-ordinated for the manufacture of war supplies must be destroyed and the braces appertaining thereto confiscated and rendered useless.

SEC. 10. For a period of six months after this law becomes effective its provisions have no application to treaties which concern the exportation of products, exportation of which was not prohibited by the statute of April 15, 1922 (B.G.Bl., No. 217), concerning the importation and exportation of war supplies. This, however, obtains only for such treaties as have been made prior to the day of promulgation of this law and performance of which (treaties) has been undertaken prior to this day.

SEC. 11. From the time this law becomes effective, the statutes concerning prohibitions of import and export, as well as of manufacture of weapons, munitions and war material, of April 15, 1922 (B.G.Bl., No. 217), and of July 21, 1923 (B.G.Bl., No. 455), become inoperative.

SEC. 12. Enforcement of this law is entrusted to the Minister of Trade and Commerce with respect to the manufacture and storing of war supplies and traffic in the same; to the Minister of Finance with respect to the import and export of war supplies and to the Minister of War with respect to

war supplies coming under the category of the guns and explosive monopoly.<sup>2</sup>

<sup>2</sup> According to the *Hemming Report* transit traffic is subject to the issue of licenses under an Order in Council of Feb. 11, 1860 (for arms and munitions), and the Austrian Federal Law of June 1, 1935 (for powder and explosives). It is also stated that instructions were issued by the Federal Ministry of Finance on Sept. 25, 1936, for immediate application of the export prohibition. *Hemming Report*, p. 9.

## 3

## BELGIUM

I. LAW CONCERNING THE IMPORTATION, EXPORTATION AND TRANSIT OF GOODS, JUNE 30, 1931<sup>1</sup>*(Translation)*

Albert, . . . The Chambers have adopted and We sanction the following:

ARTICLE 1. If, under extraordinary or abnormal circumstances, the vital interests of the country are in peril, the King may, by Decree deliberated in Ministerial Council, regulate the importation, exportation and transit of all goods.

The same powers are accorded to ensure the execution of international arrangements. This is likewise the case in so far as concerns goods which, as a result of measures taken abroad by public powers, enjoy, in exportation, such advantages that the normal action of competition in the Belgian market would be essentially vitiated by them.

ART. 2. The Royal Decrees taken in execution of the present law must be ratified by a law. To that end, they will be communicated to the Chambers, immediately if they are in session, if not, at their next session.

ART. 3. Infractions of Decrees taken in execution of Article 1 will be punished in conformity with Articles 1 and 4 of the law of December 20, 1897, concerning the repression of fraud in affairs of importation, exportation and transit of prohibited goods.

ART. 4. The measures taken in execution of the laws of December 31, 1921, and January 25, 1923, concerning the importation, exportation and transit of goods and bills [*valeurs*], will cease to have effect upon the putting into force of the present law.

Exception is made, however, for those of the measures now in force and concerning:

1. The importation of coal, of coke and coal agglomerates; crude-oil; its derivatives and residues; wheat; oats; rye; barley and winter-barley in grain; flours; coarse meals and semolinas of these cereals; wines; pastes and gelatins; oleic acids and stearic acids;

<sup>1</sup> *Pasinomie: Collection complète des Lois, Arrêtés, etc.* 5me Série, Tome XXII, 1931, p. 191.

2. The exportation of firearms and their ammunition and of anhydrous carbonate of soda.

ART. 5. The present law will enter into force July 1, 1931.

II. LAW MODIFYING THE LAW OF JUNE 30, 1931, CONCERNING THE IMPORTATION, EXPORTATION AND TRANSIT OF GOODS AND RATIFYING ROYAL DECREES PASSED IN APPLICATION OF THAT SAME LAW, JULY 30, 1934<sup>2</sup>

(Translation)

Leopold III, . . . The Chambers have adopted and We sanction the following:

ARTICLE 1. The Royal Decrees enumerated in the annex hereto, passed in execution of the law of June 30, 1931, concerning the importation, exportation and transit of goods, are ratified. This ratification takes effect from the day of publication of the said Decrees in the *Belgian Monitor*.

The sums paid in on the occasion of the delivery of the authorizations accorded in consequence of these Decrees are definitively acquired; they will be, if they are not already, deposited to the credit of the Treasury.

The provisions of the present article are applicable to pending cases.

ART. 2. The first sections of Article 1 and Article 2 of the law of June 30, 1931, cited above, are modified as follows:

"ARTICLE 1. When in extraordinary and abnormal circumstances the vital interests of the country are in peril, the King may by Decree deliberated in Ministerial Council, regulate the importation, exportation and transit of all goods and fix the special fees to be collected on the occasion of the delivery of the authorizations accorded by application of the said regulation.

"ART. 2. The Royal Decrees passed in execution of the present law will be subjected to the ratification of the Legislative Chambers. To that end they will be communicated within three months of publication in the *Belgian Monitor*; if, upon the expiration of this period, the communication is not made because the Chambers have not met, it will be made in the first month of the next session."

III. ROYAL DECREE CONCERNING THE EXPORTATION OF ARMS OF WAR, DETACHED PIECES OF ARMS OF WAR AND OF MUNITIONS OF WAR OF ALL KINDS, AUGUST 4, 1936<sup>3</sup>

(Translation)

Leopold III, . . . In view of the laws of December 17, 1831, of March 30, 1843, of April 26, 1853, and of December 20, 1897;

On the recommendation of Our Prime Minister, Our Minister of Foreign

<sup>2</sup> *Pasinomie, op. cit.*, 6me Série, Tome I, 1934, pp. 299-300.

<sup>3</sup> *Moniteur Belge*, No. 218, Aug. 5, 1936, p. 5240.

Affairs and of Foreign Commerce, Our Minister of Finance and of Our Minister of Economic Affairs,

We have decreed and We decree:

ARTICLE 1. The exportation of arms of war, of detached pieces of arms of war and of munitions of war of all kinds, is subjected to a special authorization, under the form of a license, to be delivered by Our Minister of Economic Affairs or his delegate.

ART. 2. The present decree shall enter into force the day of its publication in the *Monitor*. It shall cease to be in force, unless it is expressly prolonged, January 1, 1937.

ART. 3. Our Ministers of Foreign Affairs and of Foreign Commerce, of Finance and of Economic Affairs are charged with the execution of the present decree.

#### IV. ROYAL DECREE REGULATING THE EXPORTATION AND TRANSIT OF ARMS, MUNITIONS AND MATERIAL OF WAR OR SUCH AS ARE CAPABLE OF USE IN WAR, AUGUST 19, 1936 <sup>4</sup>

(Translation)

Leopold III, . . . In consideration of the laws of June 30, 1931, and July 30, 1934, concerning the importation, the exportation and the transit of goods, and particularly the second section of Article 1 of the law of June 30, 1931, giving the King the power to regulate importation, exportation and transit of all goods, notably to ensure the execution of international arrangements;

Upon the proposal of our Ministers met in Council,

We have decreed and We decree:

ARTICLE 1. The exportation and transit of arms, ammunition and material of war or such as are capable of use in war, recapitulated in the list annexed hereto, are subject to the production of a special authorization issued in the name of Our Minister for Economic Affairs.

ART. 2. Our decree of August 4, 1936, concerning the export of arms of war, of detached pieces of arms of war and of munitions of war of all sorts, is abrogated and replaced by the present provisions.

ART. 3. Our Ministers of Foreign Affairs and of Foreign Commerce, of Finance and Economic Affairs, are charged, in so far as it concerns each of them, with the execution of the present order, which will enter into force the day of its publication in the *Monitor*.

*List annexed to the Royal Decree of August 19, 1936*

##### *Category I:*

1. Rifles and carbines, and their barrels.

2. Machine-guns, automatic rifles and machine-pistols of all calibers, and their barrels.

<sup>4</sup> *Moniteur Belge*, No. 233, Aug. 20, 1936, p. 5456. Note—The Belgian note of Aug. 21, 1936, to the French Government stated that no licenses would be granted for Spain. *Hemming Report*, p. 10.

3. Guns, howitzers and mortars of all calibers, their mountings, barrels and recoil mechanisms.

4. Ammunition for the arms enumerated under 1 and 2 above; filled and unfilled projectiles for the arms enumerated under 3 above, and prepared propellent charges for these arms.

5. Grenades, bombs, torpedoes and mines, filled or unfilled, and apparatus for their use or discharge.

6. Tanks, armored vehicles and armored trains. Armor-plate of all kinds.

*Category II:*

Vessels of war of all kinds, including aircraft-carriers and submarines.

*Category III:*

1. Aircraft, assembled or dismantled, both heavier and lighter than air, and their propellers or air-screws, fuselages, aerial-gun mounts and frames, hulls, tail units and under-carriage units.

2. Aircraft engines.

*Category IV:*

Revolvers and automatic pistols of a weight in excess of 1 lb. 6 oz. (630 grammes) and ammunition therefor.

*Category V:*

1. Flame-throwers and all other projectors used for chemical or incendiary warfare.

2. Mustard gas, lewisite, ethyldichlorarsine, methyldichlorarsine, and all other products destined for chemical or incendiary warfare.

3. Powder for war purposes, and explosives.

V. ROYAL DECREE CONCERNING THE EXPORTATION AND TRANSIT OF ARMS, MUNITIONS AND MATERIAL OF WAR OR SUCH AS ARE CAPABLE OF USE IN WAR, AUGUST 28, 1936<sup>5</sup>

(Translation)

Leopold III, . . . In view of the laws of June 30, 1931, and July 30, 1934, relative to the importation, exportation and transit of merchandises, and especially the second line of Article 1 of the law of June 30, 1931, giving the King the power of regulating the importation, exportation, and the transit of all goods, particularly for assuring the execution of international arrangements;

Considering Our Decree of August 19, 1936, relative to the exportation and the transit of arms, munitions and material of war or such as are capable of use in war;

On the recommendation of Our Ministers met in Council,

We have decreed and We decree:

ARTICLE 1. Our Minister of Transports is charged with the responsibility of taking the necessary measures for the execution of Our Decree given on the 19th of August, 1936.

ART. 2. The present Decree is immediately executory.

<sup>5</sup> *Moniteur Belge*, No. 268, Sept. 24, 1936, pp. 6037-6038.



VI. MINISTERIAL ORDER REGARDING REGULATION OF AERIAL NAVIGATION,  
NOVEMBER 9, 1936 <sup>6</sup>

(*Translation*)

The Minister of Transports,

In view of the law of November 16, 1919, relative to the regulation of aerial navigation;

In view of the Royal Decree of August 19, 1936, relative to the exportation and to the transit of arms, munitions and material of war or such as are capable of use in war;

In view of the Royal Decree of August 28, 1936, charging the Minister of Transports with responsibility for taking the necessary measures for the execution of the decree mentioned of August 19, 1936,

ORDERS:

ARTICLE 1. The administration of aeronautic affairs is authorized to take itself, each time that the circumstances justify it, all measures which it judges to be useful for ensuring respect for the dispositions of the Royal Decree of August 19, 1936, relative to the exportation and to the transit of arms, munitions and material of war or such as are capable of use in war.

ART. 2. The said administration is authorized to determine the quantity of gasoline which may be carried by an airplane taking off from any point whatsoever in Belgian territory or territorial waters and to forbid the departure of any airplane whose supply of gasoline exceeds the quantity fixed by it.

ART. 3. The present order enters into force at once.

VII. ROYAL DECREE MODIFYING THE LIST ANNEXED TO THE ROYAL DECREE OF AUGUST 19, 1936, CONCERNING THE EXPORTATION AND TRANSIT OF ARMS, MUNITIONS AND MATERIAL OF WAR OR SUCH AS ARE CAPABLE OF USE IN WAR, FEBRUARY 17, 1937 <sup>7</sup>

(*Translation*)

Leopold III, . . . In consideration of the laws of June 30, 1931, and July 30, 1934, concerning the importation, exportation and transit of goods, and particularly the second section of Article 1 of the law of June 30, 1931, giving the King power to regulate the importation, exportation and transit of all goods, notably to ensure the execution of international arrangements;

In reconsideration of Our Decree of August 19, 1936, subjecting the exportation and transit of arms, munitions and material of war or such as are capable of use in war to the production of a special authorization delivered in the name of the Minister of Economic Affairs;

Upon the proposal of Our Ministers met in Council,

We have Decreed and Decree:

ARTICLE 1. The list annexed to the Royal Decree of August 19, 1936,

<sup>6</sup> *Ibid.*, No. 319, Nov. 14, 1936, p. 7226.

<sup>7</sup> *Moniteur Belge*, No. 55, Feb. 24, 1937, p. 1054.

quoted above, mentioning arms, munitions and material of war or that could be used for war, whose exportation and transit are subjected to the producing of a special authorization delivered in the name of Our Minister of Economic Affairs, is modified as follows:

*"Category I:*

"1. Rifles and carbines and their barrels, bayonets, sabres and lances."

ART. 2. Our Ministers of Foreign Affairs and of Foreign Commerce, of Finance and of Economic Affairs are charged, in so far as it concerns each of them, with the execution of the present order, which enters into force the day of its publication in the *Monitor*.

4

UNITED KINGDOM

I. ARMS EXPORT PROHIBITION ORDER IN COUNCIL, 1931<sup>1</sup>

At the Court at Buckingham Palace, the 19th day of May, 1931.

Present, the King's Most Excellent Majesty in Council.

Whereas by Section 8 of the Customs and Inland Revenue Act, 1879, it is provided that the following goods may, by Proclamation or Order-in-Council, be prohibited either to be exported or carried coastwise: arms, ammunition and gunpowder, military and naval stores, and any articles which His Majesty shall judge capable of being converted into or made useful in increasing the quantity of military or naval stores, provisions, or any sort of victual which may be used as food for man;

And whereas by Section 17 of the Finance Act, 1921, it is enacted that Section 8 of the Customs and Inland Revenue Act, 1879, shall extend to weapons and munitions of war of every description and firearms not being weapons of war, and ammunition for such firearms, as it applies to the goods therein mentioned, and that the said section, as so amended by this section, shall extend so as to give power to prohibit the shipment as ship's stores, whether on vessels proceeding to foreign ports or on coastwise voyages, of any of the goods to which the said section applies;

And whereas by an Order-in-Council, dated the 13th December, 1921, made in pursuance of Section 8 of the Customs and Inland Revenue Act, 1879, the exportation from the United Kingdom of certain articles was prohibited;

And whereas it is expedient that the said Order-in-Council should be revoked;

And whereas it is expedient to prohibit the exportation or shipment as ship's stores on vessels proceeding to foreign ports of the articles hereinafter enumerated;

Now, therefore, His Majesty is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows:

<sup>1</sup> *Statutory Rules and Orders*, 1931, No. 413. Note—No licenses were issued after Aug. 15, 1936, and existing ones were revoked Aug. 19, 1936. *Hemming Report*, p. 10.

(1) As from the 1st June, 1931, the following articles shall be and the same are hereby prohibited to be exported from the United Kingdom, or to be shipped as ship's stores on vessels proceeding to foreign ports—that is to say:

- (i) Cannon and other ordnance and component parts thereof;
- (ii) Carriages and mountings and accessories for mountings for cannon and other ordnance and component parts thereof;
- (iii) Cartridges, charges of all kinds, and component parts thereof;
- (iv) Explosives of every description;
- (v) Firearms of every description and component parts thereof;
- (vi) Grenades and component parts thereof;
- (vii) Machine-guns, interrupter gears, mountings for machine-guns and component parts thereof;
- (viii) Projectiles of all kinds (except airgun pellets) and component parts thereof;
- (ix) Mines, land or sea, and component parts thereof;
- (x) Depth charges, apparatus for the discharge of depth charges, and component parts thereof;
- (xi) Bombs, bombing apparatus and component parts thereof;
- (xii) Flame-throwers and component parts thereof;
- (xiii) Fuses and component parts thereof;
- (xiv) Torpedoes and component parts thereof;
- (xv) Torpedo tubes, or other apparatus for discharging torpedoes;
- (xvi) Fire-control and gun-sighting apparatus and component parts thereof;
- (xvii) Appliances for use with arms and apparatus exclusively designed and intended for land, sea or aerial warfare;
- (xviii) Bayonets, swords and lances and component parts thereof;
- (xix) Tanks and armored cars and component parts thereof;
- (xx) Aircraft, assembled or dismantled, and aircraft engines;

Provided always, and it is hereby declared, that this Order shall not apply to any exportation or shipment as ship's stores which shall be expressly permitted by a licence given by the Board of Trade, and in accordance with the conditions (if any) of such licence.

(2) The said Order-in-Council, dated December 13th, 1921, is hereby revoked.

(3) This Order may be cited as The Arms Export Prohibition Order, 1931.

## II. MERCHANT SHIPPING (CARRIAGE OF MUNITIONS TO SPAIN) ACT, 1936 <sup>2</sup>

### CHAPTER I

An Act to prohibit the discharge in or transhipment for Spanish territory of weapons and munitions of war and other articles from certain ships, to

<sup>2</sup> 1 Edw. 8, Ch. 1.

prohibit the carriage in such ships of such articles consigned to or destined for Spanish territory, and for purposes connected therewith. [3rd December 1936.]

Be it enacted by the King's Most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

# I

1. No article to which this Act applies shall be discharged at any port or place in Spanish territory or within the territorial waters adjacent thereto from a ship to which this Act applies, and no such article shall be transshipped on the high seas from any such ship into any vessel bound for any such port or place, and no such article consigned to or destined for any such port or place shall be taken on board or carried in any such ship.

2. The articles to which this Act applies are—

(a) all articles which were on the twenty-third day of November, nineteen hundred and thirty-six, prohibited to be exported from the United Kingdom by an Order in Council made by virtue of section eight of the Customs and Inland Revenue Act, 1879, and section seventeen of Finance Act, 1921 (which relate to weapons and munitions of war and other articles); and

(b) all articles which may after the passing of this Act be prohibited to be so exported by any such Order in Council and to which this Act is declared by that Order to apply.

3. The ships to which this Act applies are—

(a) all British ships, except ships registered—

(i) in any of the following Dominions, that is to say, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa and the Irish Free State; or

(ii) in any territory administered by His Majesty's Government in any of the Dominions aforesaid; and

(b) all other ships registered in, or licensed under the law of, any colony or British protectorate or any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty and is being exercised by his Majesty's Government in the United Kingdom.

4. If any article is discharged or transshipped from, or taken on board or carried in, any ship in contravention of this Act, any person being the owner, charterer or master of the ship shall, if he is privy to the contravention, be guilty of a misdemeanour.

5. Section four hundred and forty-nine of the principal Act (which provides for the forfeiture of dangerous goods carried under a false description and in certain other cases) shall apply in relation to any ship to which this

Act applies as if any articles carried in contravention of this Act were dangerous goods carried under a false description.

6. Any officer mentioned in section seven hundred and twenty-three of the principal Act who has reason to suspect that a ship is contravening or has contravened the provisions of this Act shall, without prejudice to the powers conferred by that section, have the following powers, that is to say:

(a) he may go on board the ship and for that purpose may detain the ship or require it to stop or to proceed to some convenient place;

(b) he may require the master to produce any documents relating to any cargo which is being carried or has been carried on the ship;

(c) he may search the ship and examine the cargo and require the master or any member of the crew to open any package or parcel which he suspects to contain any articles to which this Act applies;

(d) he may make any other examination or inquiry which he deems necessary to ascertain whether this Act is being or has been contravened;

(e) if it appears to him that this Act is being or has been contravened, he may, without summons, warrant or other process, take the ship and her cargo and her master and crew to the nearest or most convenient port in a country to which this Act extends, in order that the alleged contravention may be adjudicated upon by a competent court.

7. If any ship duly required under the last foregoing subsection to stop or to proceed to some convenient place fails to comply with that requirement, the master of the ship shall be guilty of a misdemeanour, and if a master or any other person fails to do any other thing duly required of him under that subsection or obstructs any officer in the exercise of his powers under that subsection, he shall be liable to a fine not exceeding one hundred pounds.

8. Anything which has been done before the commencement of this Act in purported exercise of any such power as is mentioned in subsection (6) of this section, and which would have been lawfully done if this Act had come into operation on the twenty-third day of November, nineteen hundred and thirty-six, shall be deemed to have been lawfully done.

9. For the purposes of this Act the expression "Spanish territory" shall include the Spanish zone of Morocco.

## II

1. This Act may be cited as the Merchant Shipping (Carriage of Munitions to Spain) Act, 1936.

2. This Act and the Merchant Shipping Acts, 1894 to 1932, shall be construed as one, and those Acts and this Act may be cited together as the Merchant Shipping Acts, 1894 to 1936.

3. In this Act the expression "the principal Act" means the Merchant Shipping Act, 1894.

4. This Act shall extend, not only to the United Kingdom, but also to—

(a) the Isle of Man, the Channel Islands, British India, Newfoundland and every colony; and

(b) every country to which Part XIII of the principal Act for the time being extends by virtue of an Order in Council made under section five of the Foreign Jurisdiction Act, 1890.

5. This Act shall continue in force until His Majesty by Order in Council is pleased to declare that it is no longer necessary or expedient that it should continue in force:

Provided that on the expiration of this Act subsection (2) of section thirty-eight of the Interpretation Act, 1889 (which relates to the effect of repeals), shall apply as if this Act had been repealed by another Act.

### III. ARMS EXPORT PROHIBITION ORDER, JUNE 8, 1937<sup>3</sup>

SECTION I. As from June 15th, 1937, the following articles shall be and the same are hereby, prohibited to be exported from the United Kingdom, or to be shipped as ship's stores on vessels proceeding to foreign ports—that is to say:

Mustard gas (dichlorethyl sulphide);  
 Lewisite (chlorvinylchlorarsine and  
 dichlorovinylchlorarsine);  
 Methyldichlorarsine;  
 Diphenylchlorarsine;  
 Diphenylcyanarsine;  
 Diphenylaminechlorarsine;  
 Phenylchlorarsine;  
 Ethylchlorarsine;  
 Phenyldibromarsine;  
 Ethyldibromarsine;  
 Monochlormethylchlorformate;  
 Trichlormethylchlorformate (diphosgene);  
 Dichlorodimethyl ether;  
 Dibromodimethyl ether;  
 Cyanogen chloride;  
 Ethyl bromacetate;  
 Ethyl iodacetate;  
 Brombenzylcyanide;  
 Bromacetone;  
 Brom-methylethyl ketone;  
 Chlorpicrin.

Provided always, and it is hereby declared, that this Order shall not apply to any exportation or shipment as ship's stores which shall be expressly permitted by a licence given by the Board of Trade, and in accordance with the conditions (if any) of such licence.

<sup>3</sup> *Statutory Rules and Orders*, 1937, No. 525. *London Gazette*, June 8, 1937.

## 5

## BULGARIA

ROYAL DECREE OF THE COUNCIL OF MINISTERS, No. 147, OF AUGUST 31,  
1936, PROHIBITING THE EXPORTATION OF ARMS, AMMU-  
NITION AND WAR MATERIALS <sup>1</sup>

During the existence of the present conditions in Spain it shall be forbidden to export, re-export and transship arms, ammunition, war material, vessels of war, aeroplanes, unassembled, assembled or dismantled, to Spain, or any Spanish colony or the Spanish Zone in Morocco.

The Minister of Foreign Affairs, and the Minister of Finance are charged with the enforcement of the above Decree.

<sup>1</sup> English translation supplied by the Government of Bulgaria. Note—It is stated in League of Nations, *Document* Conf.D.183.1938, that Bulgaria has a law concerning the manufacture, importation and exportation of implements of war, to be found in the *Official Gazette*, No. 28, Jan. 26, 1925.

## 6

## CZECHOSLOVAKIA

I. DECREE OF DECEMBER 13, 1927, RELATING TO THE PASSAGE OF ARMS  
ACROSS OR OUT OF THE CUSTOMS TERRITORY <sup>1</sup>

1.—Consignments of arms and spare parts thereof shall, throughout their passage through the Customs territory, be accompanied by a permit [*Be-gleitschein*] granted by the political authority of the first instance (State police) or, in the case of consignments despatched by the military authorities, by a certificate issued by the latter.

2.—For firearms which they bring with them when crossing the frontier, travellers must hold a permit granted by the diplomatic or consular authorities of Czechoslovakia or by the political authority of first instance (State police).

3.—In the case of arms and spare parts thereof imported into or exported from the Customs territory by manufacturers of or dealers in arms, or by transport agents or undertakings, the transport documents (way-bills, etc.), duly signed by the persons concerned and authenticated by the competent authorities (paragraph 1), may be used in lieu of certificates.

6.—The import, transit or export by air of arms and ammunition, of whatever description, for use in warfare, is prohibited.

<sup>1</sup> *Sbírka zákonů a nařízení* 1927, No. 168. League of Nations, Conference for the Reduction and Limitation of Armaments, "National Control of the Manufacture and Trade in Arms," *Document* Conf.D.184, 1938.IX.1,p.57.

II. NOTICE BY THE MINISTRY FOR COMMERCE AND INDUSTRY No. 88952/35, DATED OCTOBER 19, 1935, RENDERING ARMS, MUNITIONS AND IMPLEMENTS OF WAR SUBJECT TO THE PROCEDURE FOR EXPORT AUTHORIZATIONS <sup>2</sup>

In virtue of paragraph 1, No. 1, sub-paragraph 3, of the Government Decree of July 13th, 1920, No. 442 of the *Collection of Laws and Decrees*, I render the exportation of the following articles subject to the procedure of authorisation as from October 19th, 1935:

1. Military rifles and carbines and their barrels (ex p.t.478 b/3, ex p.t.478 c/1).

2. Machine guns, automatic rifles and machine pistols of all calibres and their barrels (ex. p.t.478 b/I, ex p.t.478 b/3).

3. Guns, howitzers and mortars of all calibres, their mountings, barrels and brakes (ex p.t.478 b/I).

4. Ammunition for the arms under 1 and 2 above, filled and unfilled projectiles for the arms under 3 above and propellants for those arms (ex No.t.643, ex No.t.644, ex No.t.645, ex No.t.646).

5. Grenades, bombs, torpedoes and mines—filled or unfilled (ex No.t.643, ex No.t.644, ex No.t.645)—and apparatus for their use or discharge (ex p.t.478 b/I, ex No.t.538, ex No.t.553 c/).

6. Tanks, military armoured vehicles and armoured trains (ex No.t.527, ex No.t.528, ex No.t.547, ex p.t. 548b/, ex p.t.599 b/, ex p.t.553 a/-d/, ex No.t.555, ex No.t.556, ex No.t.557);—armour of all kinds (ex No.t.433, ex No.t.445, ex No.t.471, ex No.t.483).

7. Vessels of war of all kinds, including aircraft carriers and submarines (ex p.t.558, ex No.t.559).

8. Aircraft, assembled or dismantled, heavier and lighter than air and their propellers or air screws, fusilages, fire-turrets, hulls, tail units and undercarriage units.

9. Aircraft engines (P.t.554 b/).

10. Revolvers and automatic pistols of a weight in excess of 630 grammes (ex p.t.478 b/3) and ammunition therefor (ex No.t.643, ex No.t.644).

11. Flame-throwers and all other projecting appliances for chemical or incendiary warfare (ex p.t.478 b/I, ex p.t.478 b/3, ex No.t.528, ex No.t.538, ex p.t.553 c/).

12. Mustard gas, Lewisite, ethylarsine dichlorate, methylarsine dichlorate and all other products intended for chemical [(ex p.t.620 b/, ex No.t.621 and ex p.t.622 d/) or incendiary warfare (ex p.t.488 f/)] (iron thermite), ex No.t.513 (aluminum powder), ex p.t.596 a/ (white phosphorus), ex p.t.596 b/ (metallic sodium), ex p.t.622 d/ (thermites) and ex No.t.641 (magnesium powder)].

13. Gunpowder and explosives (ex No.t.645, ex No.t.646).

<sup>2</sup> League of Nations, *Official Journal*, Spec. Suppl. No. 150, pp. 280-281.



III. DEFENCE OF THE STATE LAW OF MAY 13, 1936<sup>3</sup>

## ARTICLE 42.

(1) The export and import of arms and of spare parts indispensable for their use, explosives, ammunition and other articles of military armament and special military equipment are allowed only when authorization has been obtained from the military administration.

(2) Should the interests of national defence so require, the Ministry of Industry and Commerce, at the request of the Ministry of National Defence, shall decide and notify the public officially that the export and import of war material other than that mentioned in paragraph (1), the export and import of the raw materials and semi-finished products necessary for production, repair or maintenance of the articles referred to in paragraph (1) and of other war material, and the export and import, if any, of other articles which may be used for military purposes (or for war), shall be permitted only if authorisation has been obtained from the Ministry of Industry and Commerce, granted in agreement with the Ministry of National Defence and the Ministry for Foreign Affairs.

(3) The Ministry of National Defence may prohibit, by public notice, the export of the articles referred to in paragraph (1); the export of the articles referred to in paragraph (2) may be forbidden by public notice issued by the Ministry of Industry and Commerce at the request of the Ministry of National Defence, in agreement with the Ministry for Foreign Affairs.

(4) Should the interests of national defence so require, the Ministry of National Defence, in agreement with the Ministry for Foreign Affairs, may, by public notice, extend the provisions of paragraph (1) wholly or partly to the transport in transit of the articles referred to therein or prohibit all transport of such articles. In the case of the transport in transit of the articles referred to in paragraph (2), this decision may be taken by the Ministry of Industry and Commerce, in agreement with the Ministry for Foreign Affairs, at the request of the Ministry of National Defence.

(5) As regards authorisations granted under the provisions of paragraphs (1) and (2), dues may be levied, the amount of which shall be fixed and published in the case of the articles referred to in paragraph (1) by the Ministry of National Defence, and in the case of the articles referred to in paragraph (2) by the Ministry of Industry and Commerce.

(6) Exemptions from the application of the provisions of paragraph (1) may be granted by means of a public notice issued by the Ministry of National Defence, in agreement with the Ministry of the Interior.

(7) The notifications provided for in paragraphs (2)-(6) must be published in the "Collection of Laws and Decrees."

(8) The provisions of the present article shall in no way affect either the legal provisions under which the export, import and transport in transit of the articles referred to in paragraph (1) may be allowed only if a special

<sup>3</sup> League of Nations, "National Control," *op. cit.*, p. 58.

authorisation is granted by the State police authorities, or the legal provisions concerning the explosives monopoly.

#### IV. DECREE OF JUNE 19, 1936 <sup>4</sup>

ARTICLE 1. (1) The articles referred to in Article 42(1) of the law, the importation of which into the Czechoslovak Republic is subject to authorisation by the military authorities, shall include :

- (1) Military rifles and carbines and parts thereof;
- (2) Machine-guns and parts thereof;
- (3) Guns and parts thereof;
- (4) Finished revolvers and automatic pistols, weighing more than 630 grammes and with a calibre of 6.35 mm. and over;
- (5) Grenade-throwers, mine-throwers, and all other appliances for throwing grenades, mines, bombs and torpedoes;
- (6) Devices for throwing flames (flame-throwers), chemical substances or incendiary products;
- (7) Explosives (explosive substances and objects);
- (8) Ammunition (and parts thereof), whether filled or not, for the arms enumerated under (1)-(4);
- (9) Grenades, bombs, torpedoes, mines, and parts thereof, filled or unfilled, for the arms enumerated under (5), and hand-grenades, whether filled or not;
- (10) All apparatus for aircraft navigation (speedometers, altimeters, deflection indicators, clinometers, artificial horizons, compasses, statoscopes, variometers, etc.), apparatus for the control of aircraft engines (motometers, thermometers, petrol gauges, pressure gauges, etc.), photographic apparatus, and similar apparatus for the use of military aviators;
- (11) Bomb-release mechanism, appliances for machine-gun control, mountings, gun turrets, and interrupters;
- (12) Searchlight, listening and control machines and apparatus, and parts thereof (except ordinary headlights for motor-cars);
- (13) Collimators, gun-sights, measuring apparatus, prismatic periscopes (10 x, 12 x, 15 x, 20 x, and 25 x), small and large odometers, altimeters for aerial defence, and all other measuring apparatus for aerial defence;
- (14) Wireless apparatus and equipment (for use on the ground and in aircraft);
- (15) Armoured vehicles (armoured cars, tanks, etc.);
- (16) Special military motor and petrol-electric vehicles;
- (17) Steel helmets;
- (18) Oxygen apparatus for land use and for aircraft;
- (19) Mine-detecting apparatus;

<sup>4</sup> League of Nations, "National Control," *op. cit.*, pp. 60-62; *Sbírka zákonů a nařízení* 1936, No. 157.

- (20) Mercury fulminate fuses and ordinary fuses;
- (21) Propellers (auxiliary engines for vessels and boats);
- (22) Chemical products :
  - Phosgene,
  - Perchlormethylchlorformate (diphosgene),
  - Chloropicrin,
  - Dichlorodiethylsulphide (yperite),
  - Chlorvinylchlorarsine, dichlorodivinylchlorarsine, trichlorovinylarsine (Lewisite),
  - Diphenylchlorarsine (Clark I, sternite),
  - Diphenylcyanarsine (Clark II),
  - Phenarsazin chloride [diphenylaminochlorarsine, dihydrophenarsazin chloride (Adamsite)],
  - Ethylchlorarsine,
  - Ethylbromarsine,
  - Methylchlorarsine,
  - Ethylbromacetate,
  - Xylol bromide,
  - Benzyl bromide,
  - Bromobenzylcyanide,
  - Chloroacetophenone,
  - Bromacetone,
  - Bromomethylethyl ketone,
  - Ethylchloroacetate,
  - Thermite,
  - Magnesium,
  - Electron,
  - Metallic sodium,
  - White phosphorus,
  - Chlorosulphonic acid,
  - Oxide of sulphur,
  - Titanium tetrachloride; silicon tetrachloride,
  - Ether tetrachloride.

ART. 3.—The articles specified in Article 42(1) of the law, which can be exported only with the consent of the military authorities, include:

- (1) Article mentioned in Article 1(1);
- (2) Aircraft, with or without engines (dismantled), and parts thereof;
- (3) Aircraft engines, and parts thereof;
- (4) Parachutes;
- (5) Electrically heated airmen's overalls;
- (6) Photo-machine-guns for aircraft;
- (7) Vehicles for the transport of aeroplane wings and bodies;
- (8) Equipment and special vehicles for lighting landing-grounds;
- (9) Field telephone and telegraph apparatus and equipment for field

telephone exchange (switchboards, etc.), field telephone and telegraph cables;

(10) Smoke-producing apparatus for use by aircraft, on land or by the navy, and appliances for filling such apparatus;

(11) Protective apparel for chemical warfare (clothing, shoes, gloves);

(12) Vessels of war of all kinds, including aircraft-carriers and submarines, and parts thereof;

(13) Armour plate of all kinds;

(14) Military field generator railways, and parts thereof;

(15) Rail motors, and parts thereof;

(16) Mobile photographic laboratories;

(17) Equipment for mobile military workshops;

(18) Water-tank cars and trailers;

(19) Appliances for the transport of wounded on vehicles of all kinds;

(20) Mobile military field-kitchens and bakeries;

(21) Equipment for veterinary cars for the transport of sick horses;

(22) Oxygen apparatus for animals;

(23) Pontoon bridge sections.

## 7

## DENMARK

I. LAW CONCERNING TRAFFIC IN AND MANUFACTURE OF OR POSSESSION OF ARMS, ETC., APRIL 28, 1934 <sup>1</sup>

(*Translation*)

We, Christian the Tenth, . . .

I hereby proclaim: the Riksdag has adopted and We, with our Consent, have sanctioned the following Law:

[Sections 1 through 6 relate to manufacture, possession of, and importation of arms, etc.]

§ 7. It is prohibited, without permission from the Minister of Justice in every case, to export:

(1) Weapons of every sort with the exception of hunting arms,

(2) Ammunition with the exception of ammunition for hunting arms,

(3) Specialized machinery for the manufacture and repair of arms and ammunition,

(4) Materials for land or sea warfare,

(5) Explosives including powder as well as raw materials for manufacturing the same.

§ 11. Violations of the provisions set forth in this Law, or devolving

<sup>1</sup> *Lovtidende for Kongeriget Danmark for Aaret 1934*, pp. 565-567. Note—it is stated that no licenses have been or will be granted for Spain. *Hemming Report*, p. 11.

therefrom, shall be punishable by fine, or, under more serious circumstances, by imprisonment up to six months, and the materials involved may be taken over for the good of the state treasury. In case such confiscation is impossible, the guilty party shall be required to pay an amount equal to the value of the goods.

All fines shall go to the state treasury. All cases are to be regarded as police cases.

## II. LAW REGARDING THE CONTROL OF THE MANUFACTURE AND TRADE IN WAR MATERIAL, MAY 7, 1937 <sup>2</sup>

SECTION 3. It may be decided by Royal Decree that trade in war materials may take place only with the authorisation of the Minister of Justice and subject to conditions prescribed by the said Minister.

## III. ORDINANCE OF JULY 16, 1937 <sup>3</sup>

In accordance with Article 1, paragraph 3 of Law No. 139, of May 7, 1937, regarding control of the manufacture of war material, etc., it is decided that the term "war material" shall, for the purposes of the said law, apply to the following articles:

### I

1. Cutting weapons and thrusting weapons for war purposes.
2. Pistols, with the exception of those operated by compressed air or by a spring and those with a calibre of less than 7.65 mm., revolvers, automatic pistols and mechanical pistols of all calibres.
3. Rifles and carbines of a calibre of 6.5 mm. or more, together with parts and stands thereof, automatic and machine-rifles, machine carbines and machine-guns of all calibres together with parts and stands thereof.
- Smooth-bore shot-guns and parts thereof, in so far as the latter can only be used for smooth-bore shot-guns, are, however, excluded.
4. Guns, howitzers and mortars of all calibres, together with parts and supports thereof.
5. Ammunition and parts of ammunition for the arms mentioned under 2, 3 and 4.
6. Hand- and rifle-grenades, explosive and incendiary bombs, torpedoes and mines, together with parts thereof; appliances for releasing, ejecting or directing them or causing them to explode.
7. Sighting appliances and other appliances for determining and calculating firing data, for use with the arms mentioned under 3, 4 and 6.
8. Military searchlights.
9. Tanks, armoured cars, armoured trains and armour of all kinds.

<sup>2</sup> League of Nations, "National Control," *op. cit.*, p. 72. (*Lovtidende A* 1937, p. 785.)

<sup>3</sup> *Ibid.*, pp. 73-75. (*Lovtidende A* 1937, No. 1379.)

10. Vehicles specially arranged for the transport of arms, ammunition or other war material, together with appliances which enable vehicles to be used for such transport or for other military purposes.

## II

1. Warships of all kinds.

2. Material for mine-sweeping, mine-laying and the laying-down of barriers against submarines in so far as such material has been specially arranged for the purpose in question.

## III

1. Assembled and unassembled aircraft, whether heavier or lighter than air, together with their propellers, fuselages, machine-gun mountings or other firing mountings, tail units and undercarriage units.

2. Aircraft engines.

Aircraft of a dead weight of less than 800 kg. and aircraft engines of less than 250 h.p. are, however, not considered to be war material if it is proved to the Ministry of Justice that they are exclusively intended for civilian purposes.

## IV

1. Flame-throwers and other appliances for throwing burning or inflammable substances, together with substances for charging such appliances.

2. Substances for chemical warfare which when thrown, released or pulverised produce destructive, stupefying or irritating effects or which cause artificial fog or smoke, unless it can be proved that these substances are used as semi-manufactured products for the manufacture of articles not intended for military purposes.

Appliances for throwing or releasing substances for chemical warfare.

3. Gunpowder and explosives.

## 8

## ESTONIA

# I. LAW OF SEPTEMBER 8, 1936, CONCERNING THE EXPORT OR RE-EXPORT OF ARMS, AMMUNITION, AND MATERIALS OF WAR <sup>1</sup>

Law issued by the Government of the Republic of Estonia on the 2nd September, 1936, published in the State Gazette No. 72, of the 8th September, 1936.

PARAGRAPH 1. Commencing from the 10th September, 1936, restrictions shall be put into force concerning imports and exports foreseen in paragraphs 2 and 4 of this Law.

PAR. 2. It is prohibited to export or re-export to Spain, Spanish Colonies and the Spanish zone in Morocco, arms, ammunition, war materials of any

<sup>1</sup> English translation supplied by the Government of Estonia.

description, also the direct or indirect export or re-export of aircraft and war-ships in parts or assembled form.

PAR. 3. This embargo shall be applied also to the sale-purchase agreements which are in course of fulfilment.

PAR. 4. This Law shall come into force from the 10th September, 1936.

II. STATEMENT OF THE ESTONIAN GOVERNMENT: <sup>2</sup> By this law of the 8th September, 1936, prohibiting the export and re-export to Spain, Spanish Colonies and the Spanish Zone in Morocco of arms, ammunition and war materials of any description, the export and re-export of the following war materials mentioned in the law passed by the Government of the Republic of the 4th June, 1926, and published in the State Gazette No. 51 of the 11th June, 1926, is prohibited:

I. Firearms and their parts: (a) guns of all descriptions (guns, howitzers, mortars), (b) mine throwers, (c) bomb throwers, (d) rifles, (e) machine guns, (f) automatic rifles, (g) 7.65 mm. and larger calibre pistols and revolvers, (h) torpedo apparatus, (i) flame throwers and firearms and their parts in use in the army.

II. Side arms and their parts: (a) swords, (b) lances, (c) daggers, (d) bayonets.

III. Armoured cars, armoured railway engines and coaches and their parts; submarines and their parts; power driven cars of any description which have been specially prepared for military purposes with their attachable vehicles.

IV. Military material equipment; objects of military equipment for soldiers of all services; military harnesses and saddles; all special tools for use by the military including military mining materials.

V. Explosives: all explosives and shooting powder, percussion caps, fuzes, fuze leads, fuze charges, mines of any description and their parts; torpedoes, their war and practising firing heads, bodies and mechanical parts for war purposes which are connected with the torpedo apparatus. "*Obri*" parts of torpedoes.

VI. Explosion apparatus and fuze leads; military search lights.

VII. Munition and its components; shells, mines, bombs, hand-grenades, cartridges, explosion cartridges, percussion caps for hand-grenades; quicksilver percussion caps; primers for shells and their parts; fillings and detonators for grenades, ammunition for mine throwers; sea anchor mines, anchor equipment, sinking equipment, charges, sea mines without anchor; their parts.

VIII. Cases and parts of shells, mines, bombs and rifle cartridges.

IX. Poisonous substances for military purposes; apparatus for blinding the troops; lighting grenades for military purposes and apparatus for producing smoke; means for producing poisonous products for military purposes and requisites for protection against poisonous substances and their parts.

<sup>2</sup> *Ibid.*

x. Military aeroplanes and means of flying of any description; their separate and component parts and military observation balloons of any description; vehicles for the transportation of balloons and means of filling and sending up of such balloons; ammunition and explosives to be (*sic*) flying apparatus of any description. Photographic cameras for aircraft and their parts. Materials of any description used by the flying apparatus for military purposes. Sights and other means for throwing bombs from the flying craft.

xi. Field wireless telegraphic installations, field telephone apparatus, their parts and cable and other military installations and requisites for transmitting, receiving and intercepting of signals and information.

xii. Military optical instruments and signalling apparatus; stereotelescopes, field binoculars, periscopes, apparatus for ballistic cabinets and sound measuring stations and their parts; any kind of requisites for military flash-lights and any kind of lights and signalling apparatus for naval purposes.

xiii. Means of sighting and directing of gun fire.

xiv. Military pontoons and special tools for military pontoon parts, military observation vehicles, observation ladders and parts thereof.

xv. Military transport vehicles (gun carriages and ammunition wagons, means of transportation of machine guns, cartridge carts, mine thrower's wagons and platforms and accessories, field kitchens, telephone vehicles, sanitary carts, etc.); movable and stationary platforms for guns of any description.

xvi. Mechanical installations for naval guns (for hydraulic, electric or manual use).

xvii. Military transportable workshops.

xviii. Ammunition and packing cases especially made for the transportation and maintenance of supplies.

xix. Armour plates and gun shields. Individual parts of movable and stationary submerged protection nets.

xx. Military installations for instructional purposes.

## 9

## FINLAND

I. DECREE CONCERNING THE PROHIBITION OF THE EXPORTATION OF CERTAIN GOODS TO SPAIN, SPANISH POSSESSIONS AND THE SPANISH ZONE OF MOROCCO, SEPTEMBER 4, 1936<sup>1</sup>

(Translation)

Upon the basis of the report of the Minister for Foreign Affairs it is herewith provided, by virtue of paragraph 24 of the Law of November 29, 1924, referring to the application of the Customs tariff:

<sup>1</sup> *Finlands Författningssamling*, 1936, No. 280. See *Hemming Report*, p. 11, re transit.



## § 1

Exportation and re-exportation, as well as trans-shipment of all kinds of arms, ammunition and other implements of war, aircraft, assembled or dismantled, also warships, to Spain, the Spanish possessions and the Spanish Zone of Morocco, either direct or indirect, is prohibited until further notice, irrespective of the time when the agreement concerning them was made.

## § 2

When giving notice of intention to export, re-export or trans-ship goods mentioned in paragraph I, the consigner must indicate on the invoice [*inlaga*] the country where the merchandise is to be consumed or used.

## § 3

Anyone violating the provisions of this Decree, or concealing or making a false statement of the facts required by paragraph 2, shall be punished by a fine, if not by more severe penalty provided for by the laws in force.

## § 4

Further measures concerning the execution of this Decree will be given when necessary by the Minister for Finance.

II. LAW CONCERNING THE PROHIBITION OF THE EXPORTATION OF CERTAIN GOODS TO SPAIN, SPANISH POSSESSIONS AND THE SPANISH ZONE OF MOROCCO, APRIL 9, 1937 <sup>2</sup>

(Translation)

In accordance with the act of the Riksdag it is herewith provided:

## § 1

Exportation and re-exportation and also trans-shipment of all kinds of arms, ammunition, and other implements of war, also aircraft, or parts thereof, also warships to Spain, its possessions and the Spanish Zone of Morocco, either direct or indirect, is prohibited until further notice, irrespective of the time when the agreement concerning them was made.

## § 2

Anyone violating the provisions of this Law shall be punished by a fine, if not by more severe penalty provided for by the laws in force.

## § 3

Further measures concerning the execution of this Law will be given by Decree.

<sup>2</sup> *Ibid.*, 1937, No. 150.

## § 4

The export prohibition provided for in paragraph 1 may be repealed by Decree.

## § 5

This Law shall remain in force until the prohibition mentioned in paragraph I is suspended.

## 10

## FRANCE

I. DECREE AND ORDER OF SEPTEMBER 3RD, 1935, RELATING TO REGULATION OF THE EXPORTATION OF IMPLEMENTS OF WAR <sup>1</sup>

The President of the French Republic,

In consideration of the Law of August 14th, 1885;

In consideration of the Law of April 13th, 1895;

In consideration of Articles 27, 111, 401 of the Customs Code;

On the proposal of the President of the Council, Minister for Foreign Affairs, the Minister for the Interior, the Minister for Finance, the Minister for Commerce and Industry, the Minister for War, the Minister for the Navy, the Minister for Air and the Minister for the Colonies.

DECREES:

ARTICLE 1. The exportation, under any Customs regime, from France and Algeria of the material specified in the Annex to the present Decree is conditional on obtaining previous authorisation given under the conditions laid down in Articles 2 to 6, inclusive.

The list of this material and its classification by categories may be modified by means of orders issued in conformity by the Minister for Foreign Affairs, the Minister for Finance, the Minister for Commerce and Industry and the Minister for War, the Navy, or Air, as the case may be.

Export without authorisation is prohibited in the case of the articles referred to above.

ART. 2. Material belonging to Categories A, C and D shall not be presented or tested for purposes of transfer or delivery later, and orders shall not be accepted for material belonging to Categories A, B, C, D or E without the previous approval of the Minister for Foreign Affairs and the Minister for War, the Navy or Air, as the case may be.

ART. 3. Export authorisations are issued by the Minister for Finance on the favourable report of the Minister for Foreign Affairs, the Minister for the Interior or for the Colonies and the Minister for War, the Navy, or Air.

The Minister for Foreign Affairs may, in particular, make his favourable

<sup>1</sup> Text supplied by the Government of France. Text in English taken from League of Nations, *Official Journal*, Spec. Suppl., No. 150 (1936), pp. 138-140. Note—It is stated that no licenses will be issued under the terms of this decree as long as the international agreement is in force. *Hemming Report*, p. 12.

report depend on proof being supplied that the Government of the country of destination approves the despatch of the articles in question or even that the latter are intended for that country.

ART. 4. An exporter applying for an export authorisation must prove to the Prefect of his place of residence that he is a French national residing in France, or, if he is an alien, that he is duly authorised to reside in France and actually resides there.

He shall make a declaration before the same Prefect that the articles exported by him will not be sent either by him or by intermediate purchasers to a country other than that for which authorisation is requested.

The declaration shall give the surname, Christian names and domicile of the exporter, the nature, type, number or weight and value of the articles to be exported, the Customs office through which they will leave France and the name of the consignee.

ART. 5. As a guarantee that the goods will arrive in the country of destination and that they will not be sent on to a third country, an *acquit-à-caution* shall be given in accordance with the provisions of Articles 111 and 401 of the Customs Code.

The said *acquit-à-caution* may only be released by the Customs service on production of a certificate from the French Consul at the place of destination, certifying that the articles exported have duly arrived in the country of destination, have been declared there for consumption and have not been sent on to a third country. When the country of destination is under French sovereignty or authority, the above-mentioned certificate shall be issued by the local Customs service.

This certificate may only be made out three months after the arrival of the exported articles at their destination.

ART. 6. Export authorisations must be utilised within a period which will be fixed by the Finance Minister and which may not exceed a maximum of three months as from the date of issue of the authorisation. In the case of Far Eastern countries, this period may be renewed for an equal length of time at the exporter's request.

ART. 7. Interministerial orders shall determine the conditions of applying the present Decree and shall decide what general exceptions are allowable to the export prohibition laid down in Article 1, paragraph 3.

ART. 8. The Decree of November 8th, 1919, is abrogated.

ART. 9. If necessary, the application of the present Decree to the French colonies and mandated territories shall be ensured by Decrees enacted on the proposal of the Minister for Foreign Affairs and the Minister for the Colonies.

ART. 10. The provisions of the present Decree apply to exports for which an authorisation is required in virtue of the Decree of May 26th, 1932, which remains in force and for the application of which the said provisions are substituted for those of the Decree of November 8th, 1919.

ART. 11. The President of the Council, Minister for Foreign Affairs, the Minister for the Interior, the Minister for Finance, the Minister for Com-

merce and Industry, the Minister for War, the Minister for the Navy, the Minister for Air, and the Minister for the Colonies shall be responsible, each so far as he is concerned, for the execution of the present Decree.

## ANNEX

*Category A. Land, Sea and Air Armaments*

(a) Arms, ammunition and implements of war such as those specified below, when designed or intended for purposes of war on land, at sea or in the air:

1. Rifles, artillery carbines and cavalry magazine-rifles.
  2. Machine-guns, automatic rifles and machine-pistols.
  3. Guns, howitzers and mortars.
  4. Projectiles and ammunition for the arms enumerated under 1, 2 and 3 above.
  5. Periscopes, observation apparatus, sighting and ranging apparatus, detection and listening apparatus, including air-sighting apparatus for firing and bomb-throwing.
  6. Apparatus and appliances for the discharge of bombs, grenades, air and marine torpedoes and other forms of projectiles.
  7. Grenades, bombs, land and marine mines, fixed or mobile, torpedoes and submarine grenades.
  8. Devices for the use of the above arms, apparatus and machines.
  9. Armour-plating in sheets or moulded, armoured machines and armoured motor-cars.
  10. Transmission and projection implements.
  11. Cryptographic machines.
  12. Powders and explosives other than black powder.
  13. Protective material.
- (b) Separate parts and accessories of the above arms, ammunition and implements.

*Category B. Arms, Ammunition and Implements Capable of Being Used Both for Military and for Non-Military Purposes*

1. Sidearms.
2. Revolvers, automatic pistols and ammunition therefor.
3. Firearms destined or adapted for non-military purposes, such as sport or self-defence, firing ammunition capable of use with firearms of Category A.
4. Special plant for the manufacture of the arms, ammunition and implements of war enumerated in Categories A, C and D.

*Category C. Naval Armaments*

Vessels of war of all kinds, including aircraft-carriers and submarines, and their arms, ammunition and implements of war mounted on board and forming part of their normal armament.

*Category D. Air Armaments*

1. Aircraft, assembled or dismantled, both heavier and lighter than air, which by reason of their design or construction are adapted or intended either for military or naval reconnaissance, or for aerial warfare by the use of machine-guns or artillery, or for the carrying and dropping of bombs, or which are equipped with or prepared for any of the arms or appliances referred to in the following paragraph.

2. Special guns and machine-guns for aircraft, and their gun-mounts and frames. Bomb-racks and torpedo-carriers, and bomb or torpedo release mechanisms.

3. Propellers or air-screws, fuselages, hulls, tail units and under-carriage units of the aircraft referred to in paragraph 1 above, together with their engines and essential component parts of such engines, crankshafts, cylinders and superchargers.

*Category E. Other Aircraft Materials*

1. Aircraft, assembled or dismantled, both heavier and lighter than air, other than those included in Category D.

2. Propellers and air-screws, fuselages, hulls, tail units and under-carriage units of the aircraft referred to in paragraph 1 above, together with their engines and the essential component parts of such engines, crankshafts, cylinders and superchargers.

## II. INTER-MINISTERIAL DECREE FIXING THE CONDITIONS FOR THE APPLICATION OF THE DECREE OF SEPTEMBER 3RD, 1935, REGULATING THE EXPORT OF IMPLEMENTS OF WAR AND THE GENERAL EXCEPTIONS TO ARTICLE 1 OF THE SAID DECREE PROHIBITING THE EXPORT OF THESE IMPLEMENTS <sup>2</sup>

### I. FORMALITIES TO BE COMPLIED WITH IN SUPPORT OF THEIR APPLICATIONS BY FIRMS APPLYING FOR EXPORT AUTHORISATIONS

ARTICLE 1. In addition to making a declaration before the Prefect of their place of residence in the circumstances laid down in Article 4 of the Decree of September 3rd, 1935, exporters shall draw up an application for permission to export in accordance with the model appended to the present Order, in one copy on paper bearing a four-franc stamp <sup>3</sup> and twelve copies on unstamped paper.

They shall send:

(a) The copy on stamped paper accompanied by two <sup>3a</sup> copies on unstamped paper to the Ministry for Finance (Customs Department, *Bureau des régimes spéciaux*);

<sup>2</sup> League of Nations, *Official Journal*, Spec. Suppl., No. 150, *op. cit.*, pp. 140-141.

<sup>3</sup> A revision to this Order made on Dec. 10, 1937, called for a stamp of five francs and thirteen copies of the application, and

<sup>3a</sup> (a) was revised to read three copies for two copies as here indicated.

(b) Five copies on unstamped paper;

To the Ministry for Foreign Affairs for consignments to foreign countries, Morocco, Tunisia and the Levant States under French mandate;

Or to the Ministry for the Colonies for consignments to the African colonies and territories under French mandate;

Or to the Ministry for the Interior for consignments to Algeria;

(c) Five further copies on unstamped paper to the military departments concerned—that is to say, according to the circumstances:

To the Ministry for War (General Secretariat, Service for the Supply of Material abroad);

Or to the Ministry for the Navy (General Staff, Second Bureau);

Or to the Air Ministry (Minister's Office, Air Development Service).

ART. 2. In application of the second paragraph of Article 3 of the Decree of September 3rd, 1935, exporters shall, in as far as concerns the implements covered by Categories A, C and D of the Annex to the said Decree, submit to the Ministry for Foreign Affairs in support of their application a document proving that the consignment is for direct supply to the competent authorities of the importing country or, with the consent of the said authorities, to a specific private establishment designated by it for that purpose.

## II. GENERAL EXCEPTIONS TO THE PROHIBITION OF EXPORTS ENACTED BY ARTICLE 1 OF THE DECREE OF SEPTEMBER 3RD, 1935

ART. 3. The following shall not be subject to the regime of previous authorisations provided for by the Decree of September 3rd, 1935:

(a) Arms and ammunition transported by persons duly authorised to be in possession of such arms either for the purposes of their occupation or for sporting purposes or for self-defence;

(b) The circulation of civilian aircraft as specified in Categories D and E of the Annex to the said Decree, when duly registered as being engaged in commercial transport or when flying for industrial, commercial or tourist purposes;

(c) Aeroplanes assembled or dismantled neither designed nor intended for air warfare, of an unloaded weight of less than 1 ton;

(d) Aircraft engines of less than 150 h.p.;

(e) Goods transported in international transit or transshipped without landing in the ports of France and Algeria.

This exception may, however, be suspended by notice published in the *Official Journal* in respect of transit and transshipment for all destinations, which will then be subject to the regime of previous authorisation provided for in the Decree of September 3rd, 1935. This exception may be suspended in the same way as regards consignments to certain countries mentioned by name. In the latter case, *acquit-à-caution* guaranteeing the arrival in the country of destination and the non-reconsignment of the goods to a country to which the transit and transshipment of goods is prohibited will be issued at the time of the exportation of consignments for which authorisation has

been maintained. These *acquits-à-caution* will be issued and cancelled in the manner laid down in Article 5 of the Decree of September 3rd, 1935.

### III. RETURN TO FRANCE OF MATERIAL EXPORTED UNDER THE CONDITIONS LAID DOWN IN THE DECREE OF SEPTEMBER 3RD, 1935

ART. 4. The material referred to in the Annex to the Decree of September 3rd, 1935, which may be returned for account of the exporters shall not be subject to any special formality other than the usual Customs formalities in connection with French goods returned to France.

### III. ORDER OF OCTOBER 20TH, 1935, AMENDING THE ABOVE LIST <sup>4</sup>

#### (Translation)

The President of the Council, Minister for Foreign Affairs, the Minister for the Interior, the Minister for Finance, the Minister for Commerce and Industry, the Minister for War, the Minister for the Navy, the Minister for Air and the Minister for the Colonies,

#### DECREE:

ARTICLE 1. The following appliances and substances are provisionally added to Category B as subsections 5 and 6 in the list annexed to the Decree of September 3rd, 1935:

5. Flame-throwers and all other projectors used for chemical or incendiary warfare.

6. Mustard gas, lewisite, ethyldichlorarsine, methyldichlorarsine, and all other products destined for chemical or incendiary warfare.

### IV. ORDER AMENDING THE ABOVE LIST, JUNE 2, 1936 <sup>5</sup>

#### (Translation)

The Minister for Foreign Affairs, the Minister for Finance, the Minister for Commerce and Industry, the Minister for War,

#### DECREE:

ARTICLE 1. The list annexed to the Decree of September 3, 1935, is amended as follows:

Category A—paragraph 12—

in place of:

“powders and explosives other than black powder”

read

“powders and explosives other than powders for sport, black powders for mining purposes and explosives for industrial purposes, as well as their accessories for firing.”

V. On August 8, 1936, the French Government decided, in Ministerial Council, “to prohibit without exception until further order, the export

<sup>4</sup> Text supplied by the Government of France.

<sup>5</sup> *Ibid.*

for destination in Spain and its possessions of implements of war specified in the list annexed to the Decree of September 3, 1935." <sup>6</sup>

- VI. On August 9, 1936, the Minister for Foreign Affairs telegraphed to the Minister for Finance asking him to give instructions to the Customs Bureaux concerning the decision of August 8 relating to the prohibition of export of implements of war to Spain.<sup>7</sup>

VII. NOTICE TO EXPORTERS <sup>8</sup>

(Translation)

Transit and trans-shipment of arms, munitions and implements of war of every country for Spain or the Spanish possessions is prohibited.

Subsequent re-exportation from intermediate warehousing, from trans-shipment warehouse, from temporary admission or from transit of these goods destined for other countries shall necessitate upon departure, the issuance of an *acquit-à-caution* guaranteeing arrival at the country of destination and non-reexportation of the goods to a destination in Spain or the Spanish possessions.

Issuance and cancellation of this *acquit-à-caution* shall be carried out under the conditions prescribed in Article 5 of the Decree of September 3, 1935.

VIII. INTER-MINISTERIAL ORDER AMENDING THE DECREE OF SEPTEMBER 3, 1935, FIXING THE CONDITIONS FOR THE APPLICATION OF THE DECREE OF THE SAME DAY REGULATING THE EXPORT OF IMPLEMENTS OF WAR AND THE GENERAL EXCEPTIONS TO ARTICLE 1 OF THE SAID DECREE PROHIBITING THE EXPORT OF THESE IMPLEMENTS, SEPTEMBER 18, 1936 <sup>9</sup>

(Translation)

ARTICLE 1. The inter-ministerial decree of September 3, 1935, regulating the export of implements of war and the general exceptions to Article 1 of the said Decree prohibiting the export of these implements is thus completed:

Add to Article 3, following paragraph 3, the following paragraph:

"f: implements of war reexported, after testing, repair, or completion, on release of *acquits-à-caution* for temporary admission.

"However, reexportations carried out under these conditions remain subject to the formalities prescribed in Articles 4 and 5 of the Decree of September 3, 1935."

<sup>6</sup> Information supplied by the Government of France.

<sup>7</sup> Information supplied by the Government of France.

<sup>8</sup> Text supplied by the Government by France. Published in *Journal Officiel*, Sept. 8, 1936.

<sup>9</sup> *Ibid.*



IX. On December 15, 1936, the French Government decided in Ministerial Council to exclude protective materials [*matériaux de protection*] from the list of implements of war whose export to destinations in Spain and the Spanish possessions was prohibited on August 8, 1936.<sup>10</sup>

X. INTER-MINISTERIAL ORDER OF MAY 21, 1937, REGULATING THE EXPORT AND TRANSIT OF IMPLEMENTS OF WAR<sup>11</sup>

(Translation)

The Minister for Foreign Affairs, the Minister for the Interior, the Minister for Finance, the Minister for Commerce, the Minister for National Defense and War, the Minister for the Navy, the Minister for Air and the Minister for Colonies;

In consideration of the Decree of September 3, 1935,

In consideration of the orders of September 3, 1935, October 20, 1935, and September 18, 1936,

In consideration of the Non-Intervention accord of London,

DECREE:

ARTICLE 1. Article 3 of the Order of September 3, 1935, amended by the Orders of October 20, 1935, and September 18, 1936, is replaced by the following provisions:

ART. 3. The following shall not be subject to the regime of authorization provided for by the Decree of September 3, 1935:

(a) Transport of arms and ammunition by persons duly authorized to be in possession of such arms whether by reason of their occupations, for sporting purposes, or for purposes of self-defence;

(b) Circulation of civilian aircraft as specified in Categories D and E of the annex to the said Decree when they are duly registered as being engaged in commercial transport or when flying for industrial, commercial or tourist purposes;

(c) Reexportation for all destinations, resulting from intermediate warehousing, from transit, from trans-shipment or from warehousing, of the implements enumerated hereafter:

1. Periscopes, observation apparatus, sighting and ranging apparatus, detection and listening apparatus, including air-sighting apparatus for firing and bomb-throwing;
2. Apparatus and appliances for the discharge of bombs, grenades, air and marine torpedoes and other forms of projectiles;
3. Devices for the use of the arms, apparatus and appliances for fighting;
4. Transmission and projection implements;
5. Cryptographic machines;
6. Protective material;

<sup>10</sup> Information supplied by the Government of France.

<sup>11</sup> Text supplied by the Government of France.

7. Firearms destined or adapted for non-military purposes, such as sport or self-defence, firing ammunition capable of use with military firearms;
8. Special plant for the manufacture of the arms, ammunition and implements of war enumerated in Categories A, C and D;
9. Separate parts and accessories of the above-mentioned arms and implements;

(d) Implements other than those enumerated in paragraph (c) above and transported in international transit or trans-shipped without landing in ports of France or Algeria.

This exception may, however, be suspended by notice published in the *Official Journal* in respect of transit and trans-shipment for all destinations, which will then be subject to the regime of previous authorization provided for in the Decree of September 3, 1935. This exception may be suspended in the same way as regards consignments to certain countries mentioned by name. In the latter case, an *acquit-à-caution* guaranteeing the arrival in the country of destination and the non-reconsignment of the goods to a country to which the transit and trans-shipment of goods is prohibited will be issued at the time of the exportation of consignments for which authorization has been maintained. These *acquits-à-caution* will be issued and cancelled in the manner laid down in Article 5 of the Decree of September 3, 1935.

(e) Implements other than those enumerated in paragraph (c) above and re-exported after testing, repairs or completion, on release of *acquits-à-caution* for temporary admission.

However, reexportations carried out under these conditions remain subject to the formalities prescribed in Articles 4 and 5 of the Decree of September 3, 1935.

ART. 2. The Order of September 18, 1936 is abrogated.

## XI. NOTICE TO EXPORTERS, JUNE 22, 1937<sup>12</sup>

### (Translation)

Exporters are reminded that as a consequence of the Order of May 19, 1937 (*J. O.*, May 21), exportation and reexportation under all regimes, of implements of war enumerated in the list below are strictly prohibited for destinations in Spain or the Spanish possessions:

1. Rifles, muskets and carbines (except sporting arms);
2. Sidearms;
3. Machine-guns, automatic-rifles and machine-pistols of all calibers; as well as their mountings;
4. Revolvers and automatic-pistols;
5. Guns, howitzers and mortars of all calibers, as well as their carriages;
6. Ammunition for the arms enumerated under 1, 3 and 4 above; projectiles filled and unfilled for the arms enumerated under 5 above;

<sup>12</sup> Text supplied by the Government of France.

7. Grenades, bombs, torpedoes, mines, filled or unfilled, as well as the devices and apparatus for the use of these machines;
8. Tanks, armored cars, sheet-armor of all sorts;
9. Flame-throwers and all other projectors used for chemical or incendiary warfare;
10. Mustard-gas, lewisite, ethyldichlorarsine, methyldichlorarsine and all other products destined for chemical or incendiary warfare;
11. Military powders and explosives;
12. Aircraft, assembled or dismantled, airplane engines, propellers, fuselages, turrets and special mountings, hulls, tail units and under-carriage units;
13. Vessels of war of all kinds, including aircraft-carriers and submarines;
14. Separate parts of arms and ammunition.

Reexportations as a consequence of trans-shipment without landing or of international transit of the implements enumerated above are authorized for all destinations other than Spain and Spanish possessions, upon condition of the signing of an *acquit-à-caution* guaranteeing the arrival at the country of destination and the non-reexportation of these implements to a destination in Spain or the Spanish possessions. The issuance and cancellation of this *acquit-à-caution* shall be carried out under the conditions prescribed in Article 5 of the Decree of September 3, 1935.

Exportation as well as reexportation consequent upon every regime other than trans-shipment without landing and international transit of the same implements destined for other countries than Spain and Spanish possessions are subject to statutory authorization.

Finally, exportation of implements of war specified under C of Article 3 of the Order of September 3, 1935, as modified by the Order of May 19, 1937, excepting protective material, to a destination in Spain or the Spanish possessions, is prohibited.

The present notice is substituted for that inserted in the Official Journal of September 18, 1936.

## XII. DECREE OF DECEMBER 30, 1937 (Replacing Decrees of August 14 and November 6, 1936) <sup>13</sup>

ARTICLE 1. The list of material referred to in Article 1 of the Law of August 11, 1936, is to be as follows:

Category I. Firearms designed or intended for land, sea or air warfare:

1. Pistols, automatic pistols and revolvers of a calibre equal to or greater than 6.5 mm. or with a barrel exceeding 10 cm.
2. Rifles, artillery carbines and cavalry magazine rifles of all calibres for military use, together with their barrels, bolts and breech-casings.
3. Machine-guns, automatic rifles and machine pistols of all calibres,

<sup>13</sup> League of Nations, "National Control," *op. cit.*, pp. 115-116.

together with their barrels, bolts and breech-casings; special machine-guns for aircraft.

4. Guns, howitzers and mortars of all calibres, together with their mountings, barrels, breeches, cradles, recoil mechanisms and recuperators; special guns for aircraft.

5. Ammunition, projectiles and cases, whether filled or unfilled, for the arms specified in Nos. 1, 2, 3 and 4 above; filled and unfilled appliances and apparatus for the discharge of the projectiles covered by the present paragraph.

6. Grenades, bombs, torpedoes and mines of all kinds, filled or unfilled; apparatus for their discharge; appliances and apparatus, filled or unfilled, for exploding them.

7. Special appliances for aiming, directing fire and listening (including telemeters) for firing at vessels and aircraft, and for firing on board vessels and aircraft.

Category II. Appliances carrying firearms for use in warfare:

1. Tanks, armoured cars and their armour plating and turrets.

2. (a) Vessels of war of all kinds, including aircraft-carriers and submarines and their armour plating, turrets and casemates;

(b) Submarine periscopes.

3. Air armaments:

(a) Aircraft, assembled or dismantled, heavier than air, of 100 h.p. or over;

(b) Aircraft, lighter than air;

(c) Propellers and air-screws, fuselages, hulls, wings, tail units and undercarriage units for craft specified under (a) and (b) above;

(d) Aircraft engines of 100 h.p. or over;

(e) The following essential component parts of the aircraft engines referred to in (d): crankshafts, cylinders and superchargers;

(f) Special turrets and mountings for aircraft machine-guns and guns.

Category III. Material to be used against gas used in warfare.

## II

### GERMANY

#### I. LAW CONCERNING THE EXPORTATION AND IMPORTATION OF WAR MATERIAL, NOVEMBER 6, 1935<sup>1</sup>

The Government of the Reich has passed the following Law, which is promulgated herewith:

<sup>1</sup> English translation furnished by the British Foreign Office through the courtesy of the Department of State, Washington. Note—It is stated that the issuance of permits for Spain was suspended by Ministerial Decree, August 24, 1936. *Hemming Report*, p. 12.

## § 1

The exportation and importation of war material (arms, ammunition, and other war material) is only allowed under special licence, which will be granted by the Reich Commissioner for Export and Import Licences in agreement with the Reich Minister of War.

## § 2

The Reich Commissioner for Export and Import Licences will publish in the "Deutscher Reichsanzeiger" a list of war material which may only be exported and imported with his consent.

## § 3

(1) Any person acting contrary to the provisions of § 1 will be punished with imprisonment up to one year, or detention or a fine.

(2) Apart from these penalties the war material may be confiscated, even if it does not belong to the guilty person or an accomplice.

(3) If it is not possible to prosecute or condemn a particular individual, the confiscation may be pronounced independently, provided that the necessary conditions for this course otherwise exist.

## § 4

This Law takes the place of the Law regarding war material of July 7th, 1927 (*Reichsgesetzblatt*, I,p.239 and the following pages).

## II. NOTICE OF THE REICH COMMISSIONER FOR EXPORT AND IMPORT PERMITS, NOVEMBER 16, 1935<sup>2</sup>

In virtue of §§ 1 and 2 of the Law of November 6th, 1935, on the Exportation and Importation of War Materials (*Reichsgesetzblatt*, Pt.I,No.126, p.1337), I hereby publish a list of war materials which may be exported or imported only with my permission:

1. Arms and ammunition of all kinds and spare parts thereof, with the exception of the following:

(a) Arms mentioned in § 1 of the Decree of July 13th, 1928, for the Enforcement of the Law on fire-arms and ammunition (*Reichsgesetzblatt*, Pt.I,p.198), in the text published on June 2nd, 1932 (*Ibid.*, p.253);

(b) Sporting arms mentioned in § 22 of the Decree of July 13th, 1928, for the Enforcement of the Law on fire-arms and ammunition (*Ibid.*, Pt.I, p.198); [Replaced by the 1938 law. Ed.]

(c) Heavy rifled arquebuses and arms of small calibre;

(d) Pistols and revolvers, of calibre less than 8 mm.;

(e) Ammunition for the arms included in items (a) to (d);

(f) Thrusting and cutting arms;

(g) Explosives for commercial purposes.

<sup>2</sup> League of Nations, "National Control," *op. cit.*, p. 127.

2. Instruments intended solely for use on military arms or for rendering such arms usable—for instance, measuring instruments, sighting and control gear, periscopes for submarines, ejector tubes, apparatus for the discharge of projectiles.

3. Tanks, armoured cars, armoured trains.
4. Warships of all categories.
5. Military aircraft and spare parts.
6. Substances for chemical warfare.

### III. NOTICE CONCERNING IMPLEMENTS OF WAR, AUGUST 16, 1937 <sup>3</sup>

#### (Translation)

According to Paragraph 4, Section I of the law concerning the Control of the Traffic of the German Mercantile Marine with Spanish Ports, of April 7, 1937 (*Reichsgesetzblatt*, 1937 II, S. 127) <sup>4</sup> it is announced that the following articles are to be considered as Implements of War:

1. Rifles and carbines (excluding sporting arms);
2. Bayonets, sabres and lances;
3. Machine guns, automatic rifles, and machine pistols of all calibres, and their mountings;
4. Revolvers and automatic pistols;
5. Guns, howitzers, and mortars of all calibres, and their mountings;
6. Ammunition for all the arms enumerated under numbers 1, 3 and 4; and filled and unfilled projectiles for the arms enumerated under number 5;
7. Grenades, bombs, torpedoes, and mines, filled or unfilled, and apparatus for their use or discharge;
8. Tanks, armoured vehicles; armour plate of all kinds;
9. Flame-throwers and all other projectors used for chemical or incendiary warfare;
10. Mustard gas, lewisite (Chlorophenyldichlorarsine), ethyldichlorarsine, methyldichlorarsine, and all other products destined for chemical or incendiary warfare;
11. Powder for war purposes, and explosives;
12. Aircraft, assembled or dismantled, and aero-engines, propellers or air-screws, fuselages, aerial gun-mounts and frames, hulls, tail units and under-carriage units;
13. Vessels of war of all kinds, including aircraft-carriers and submarines;
14. Component parts of arms and munitions.

*Minister for Foreign Affairs, VON NEURATH.*

<sup>3</sup> Supplied by the German Government.

<sup>4</sup> See Appendix VII.

## 12

## GREECE

ROYAL DECREE REGARDING PROHIBITION OF ARMS AND AMMUNITION TO  
SPAIN, SEPTEMBER 24, 1936<sup>1</sup>

SOLE ARTICLE. The direct or indirect exportation, re-exportation and transit from Greek territory of any arms, ammunition, war materials, aircraft, assembled or unassembled, and of warships of any kind, even now under construction, destined for Spain, the Spanish Possessions, or the Spanish Zone of Morocco, is forbidden.

<sup>1</sup> Translation furnished by the Greek Government. Note—It is stated that this decree was issued under Article 1 of Law 5552 of June 27, 1932, requiring the obtaining of export permits from the War Ministry, and that none had been issued. *Hemming Report*, p. 12.

## 13

## HUNGARY

ORDER IN COUNCIL No. 5.350/1936.M.E. OF THE ROYAL HUNGARIAN  
GOVERNMENT CONCERNING THE PROHIBITION OF EXPORT AND  
TRANSIT OF ARMS AND WAR MATERIAL TO SPAIN AND  
THE SPANISH COLONIES, SEPTEMBER 4, 1936<sup>1</sup>

On the strength of the authorisation obtained in Section 5 of Act XIX ex-1924, the Royal Hungarian Government order the following:

1. Until further notice the direct or indirect export or re-export or transit through the territory of Hungary of all kinds of arms, munitions and war materials, further of every kind of aeroplanes (also unassembled) and warships to Spain, to the Spanish Colonies and to the Spanish Zone in Morocco is prohibited.

2. This Order comes into force on the day of its promulgation.

<sup>1</sup> *Budapesti Közlöny* (Official Gazette), September 6, 1936. English text supplied by the British Foreign Office through the courtesy of the Department of State, Washington.

## 14

## IRISH FREE STATE

I. FIREARMS ACT, 1925<sup>1</sup>

BE IT ENACTED . . .

1. (1) In this act—

the word "firearm" means a lethal firearm or other lethal weapon of any description from which any shot, bullet or other missile can be discharged;

<sup>1</sup> *Public General Acts*, 1925, p. 245 *et seq.*

the word "ammunition" (except where used in relation to a prohibited weapon) means ammunition for a firearm but also includes grenades, bombs, and other similar missiles whether the same are or are not capable of being used with a firearm, and also includes any ingredient or component part of any such ammunition or missile;

the expression "prohibited weapon" means and includes any weapon of whatever description designed for the discharge of any noxious liquid, noxious gas, or other noxious thing, and also any ammunition (whether for any such weapon as aforesaid or for any other weapon) which contains or is designed or adapted to contain any noxious liquid, noxious gas, or other noxious thing;

(2) In this act the word "port" means any authorized place of entry into the Saorstat Eireann, and the words "export" and "import" include respectively export and import over a land frontier as well as export and import over a sea frontier, and all cognate words shall be construed accordingly.

16. (1) It shall not be lawful for any person to consign

(a) for export from Saorstat Eireann, or

(b) for removal from one place in Saorstat Eireann to another such place,

any firearm or ammunition, unless such export or removal is authorized in writing by the Superintendent of the Gárda Síochána of the district from which such firearm or ammunition is consigned for export or removal.

(2) Every person who consigns for export or removal as aforesaid any firearm or ammunition contrary to the provisions of this section shall be guilty of an offence under this act and shall be punishable accordingly.

## II. SPANISH CIVIL WAR (NON-INTERVENTION) ACT, 1937, SECTION 10 (See Appendix V—Irish Free State)

### III. ORDER IN COUNCIL ENTITLED SPANISH CIVIL WAR (EXPORT OF WAR MATERIAL) ORDER, 1937, FEBRUARY 26, 1937<sup>2</sup>

WHEREAS it is enacted by subsection (1) of section 10 of the Spanish Civil War (Non-Intervention) Act, 1937 (No. 1 of 1937), that the Executive Council may by order whenever they so think proper take all such measures, impose all such prohibitions and restrictions, and do all such things as shall, in the opinion of the Executive Council, be necessary or expedient to prevent the exportation from Saorstat Eireann to Spain or any Spanish territory of articles which are, in the opinion of the Executive Council, implements of war or war material:

<sup>2</sup> Supplied by the British Foreign Office through the courtesy of the Department of State, Washington. Note—Action previous to this time was taken under the Firearms Act, *supra*. *Hemming Report*, p. 13.



AND WHEREAS such of the articles mentioned in the Schedule to this Order as are implements are, in the opinion of the Executive Council, implements of war, and all other articles mentioned in the said Schedule are, in the opinion of the Executive Council, war material:

AND WHEREAS the prohibitions and restrictions imposed by and the other provisions contained in this Order are, in the opinion of the Executive Council, necessary or expedient to prevent the exportation from Saorstát Éireann to Spain or to Spanish territory of the articles mentioned in the Schedule to this Order:

Now, the Executive Council, in exercise of the power conferred on them by subsection (1) of section 10 of the Spanish Civil War (Non-Intervention) Act, 1937 (No. 1 of 1937), and of every and any other power them in this behalf enabling do hereby order as follows:

1. This order may be cited as the Spanish Civil War (Export of War Material) Order, 1937.

2. The Interpretation Act, 1923 (No. 46 of 1923), applies to the interpretation of this Order in like manner as it applies to the interpretation of an Act of the Oireachtas.

3. (1) It shall not be lawful for any person to export or attempt to export from Saorstát Éireann to any place in Spain or in Spanish territory (whether directly or through any other country) any of the articles mentioned in the Schedule to this Order save under and in accordance with a licence in that behalf issued by the Minister for Justice under this Order.

(2) The foregoing provisions of this paragraph shall have effect as if they were included in the Customs Consolidation Act, 1876, and that Act, as amended or extended by subsequent enactments, shall apply accordingly.

4. (1) The Minister for Justice may, if and whenever he so thinks proper, issue to any person a licence to export from Saorstát Éireann to a specified place in Spain or in Spanish territory specified articles the exportation of which to such place without such licence is prohibited by this Order.

(2) The said Minister may attach to any licence issued by him under this paragraph all (if any) such conditions and limitations as he shall think proper and shall state in such licence.

(3) Every licence issued by the said Minister under this paragraph shall be expressed and shall operate to authorise the person named in that behalf in such licence to export, notwithstanding anything contained in this Order, the articles specified in such licence to the place in Spain or Spanish territory similarly specified, but subject to and in accordance with the conditions and limitations stated in such licence and subject to due compliance with the law (other than this Order) relating to the exportation of such articles.

5. The provisions of this Order are in addition to and not in substitution for any provision relating to exportation from Saorstát Éireann contained in any statute, statutory order, or other enactment, and accordingly nothing in this Order shall operate—

(a) to prejudice or affect or to relieve from any prohibition of or

restriction on the exportation of any article mentioned in the Schedule to this Order imposed by any statute, statutory order, or other enactment (whether passed or made before, on, or after the date of this Order) for the time being in force, or

(b) to take away, restrict, or otherwise prejudice any power in relation to the exportation of all or any of the articles mentioned in the Schedule to this Order conferred on any Minister or on the Revenue Commissioners or any other person by statute, statutory order, or other enactment (whether passed or made before, on, or after the date of this Order) for the time being in force, or

(c) relieve from any penalty imposed by any statute, statutory order, or other enactment (whether passed or made before, on, or after the date of this Order) for the time being in force in relation to the exportation of all or any of the articles mentioned in the Schedule to this Order.<sup>3</sup>

<sup>3</sup> For Schedule, see Appendix VII—Irish Free State, No. 3, The Merchant Shipping (Spanish Civil War) Order, April 17, 1937.

## 15

### ITALY

#### I. UNIFIED TEXT OF THE PUBLIC SECURITY LAWS, JUNE 18, 1931<sup>1</sup>

ARTICLE 28. Apart from the cases stipulated in the Penal Code, it is forbidden, except under licence from the Minister of the Interior, to collect or be in possession of war arms and other similar arms, whether national or foreign, or parts of arms, or of ammunition, military uniforms or other objects intended for the arming or equipment of armed forces, whether national or foreign.

A licence is also necessary for the manufacture, import and export of the aforesaid arms or parts thereof, of ammunition, military uniforms or other objects intended for the arming or equipment of armed forces.

ART. 31. Subject to the provisions of Article 28 concerning war arms, it is forbidden to manufacture other arms, to import them into the State, to export them, to be in possession of them for commercial or industrial purposes or to offer them for sale without a licence from the commissary of police. . . .

ART. 32. The licences referred to in Articles 28 and 31 may not be issued to persons without legal capacity and are valid exclusively for the premises named in the said licences.

The management of the factory, depot or shop for the sale of arms may be delegated to a representative. . . .

ART. 33. Persons engaged in the repair of arms must notify the police commissary and inform him of any transfer of their establishment.

ART. 35. Every person engaged in the manufacture of, trade in or repair

<sup>1</sup> League of Nations, "National Control," *op. cit.*, pp. 131-132.

of arms, is required to keep a register of each day's transactions in which must be entered particulars of the persons with whom such transactions are carried on.

This register must be produced at the request of police officials or agents.

## II. REGULATIONS OF JANUARY 21, 1929<sup>2</sup>

ARTICLE 41. In order to obtain a licence for the export of war material, it is necessary to state, in addition to particulars of the applicant, the following information:

(a) The country of destination of the material and the firm, person or corporation to which or to whom the material is being delivered;

(b) The factory or depot from which the material is being sent;

(c) The nature and the amount of the material.

The particulars stipulated under letters (a), (b) and (c) of the present article must be entered on the licence.

ART. 42. Applications concerning the conveyance of war material in transit in the Kingdom and licences in respect thereof must contain the particulars stipulated in Articles 40 and 41 of the present regulation.

ART. 43. Every consignment of war material requires a special export, import or transit licence, as the case may be; the licence must be produced at the Customs offices.

ART. 50. The licence mentioned in Article 30 of the Law, for the importation of arms from abroad, or for export, is issued by the police authorities of the province in which the commune to or from which the arms are being sent is situated.

The police authorities of the frontier province through which the arms are imported are responsible for taking the necessary measures in connection with applications in the matter of transit.

The provisions of Article 43 of the present regulation are applicable to the licences mentioned in Article 30 above.

## III. NOTE.

The editor has been informed by the American Embassy at Rome that an official communiqué was issued on August 28, 1936, stating that by means of appropriate Ministerial measures adopted by agreement among the interested administrations the exportation direct and indirect, the re-exportation and transit of arms, munitions and war materials as well as airplanes, assembled or non-assembled, and war vessels to Spain, the Spanish possessions and the Spanish zone of Morocco were forbidden. The communiqué added that the prohibition applied to all contracts in the course of execution.

N.B. It has not been possible to obtain the text of either the communiqué or of the "appropriate Ministerial measures."

<sup>2</sup> *Ibid.*, pp. 135-136.

## 16

## LATVIA

SUMMARY OF LATVIAN MEASURES CONTROLLING THE EXPORTATION  
OF ARMS AND MATERIAL OF WAR <sup>1</sup>

A complete control of foreign trade exists in Latvia embracing the movements of all goods across the frontiers, and no exports of arms or war material can take place without the sanction of the competent Government department. Further, Section 15(K) of the general regulations of the Customs Tariff forbids the import of firearms for war, their accessories and munition, except for Government use, while Section 138(2) of the Customs Law prohibits the transit of such goods the import of which is forbidden. There are also no arms factories in Latvia. In connection with the above, it seemed unnecessary to have a special law introducing the embargo on exports of arms. However, in order to draw the attention of the Customs authorities to possible attempts of unlawful exports of arms, the Minister of Finance issued a decree on September 10, 1936, to the effect that it is prohibited to export, directly or indirectly, to reexport or carry in transit to Spain, Spanish Colonies or Spanish Morocco, all kinds of arms, munitions, war materials, aeroplanes, assembled or unassembled, and all war ships. This prohibition applies also to any contracts which might be already in existence.

<sup>1</sup> Summary furnished by the Latvian Government. It is stated in League of Nations *Document Conf. D. 183 (b)*. 1938, that trade in explosives is governed by a law published in *Valdības Vestnesis*, No. 97, 1928, and that trade in arms and ammunition is governed by a law appearing in *ibid.*, No. 82, 1932.

## 17

LITHUANIA <sup>1</sup>

The control of the traffic in arms, munitions, and war material in Lithuania is effected through the provisions of the following laws:

1. *The Customs Law* of July 10, 1924, as amended on August 14, 1936;
2. *The Tariff Law* of April 3, 1925.

*The Customs Law* of April 4, 1924 (published in the "*Vyriausybės Žinios*" (Government Gazette) on July 10, 1924, No. 164-1153) provides:

(Translation) . . . #112. The free export of goods from Lithuania is permitted. Restrictions of export are regulated by law." . . .

The above provision of law was subsequently amended as follows (see the "*Vyriausybės Žinios*"—Government Gazette—August 14, 1936, No. 545-3791):

<sup>1</sup> Information supplied by the British Foreign Office through the courtesy of the Department of State, Washington.

(Translation) . . . *"The Amendment of the Customs Law*

(V.Z. Nr. 164-1153)

"The Customs Law is amended as follows:

"To #112 is added the following:

"Note: The Cabinet of Ministers, on the recommendation of the Minister of Finance, have authority to establish the list of goods the export of which requires the acquisition of a licence.

"Licences are issued in accordance with the rules approved by the Minister of Finance.

"This amendment is in force as from the day of its publication.

"(Signed)

A. SMETONA, *President of the Republic,*

J. TUBELIS, *Prime Minister."*

In conformity with the above authority the Cabinet of Ministers, on the same day, August 14, 1936, established and made public a "List of Goods Requiring a Licence for Their Export." This List was published in the "*Vyriausybės Žinios*" (Government Gazette), No. 545-3792, but did not contain provisions for the export of arms, munitions, etc.

On August 29, 1936, the Cabinet of Ministers, by virtue of the authority granted to them by the amended Law of August 24, 1936, as mentioned above, amended the said "List of Goods Requiring a Licence for Their Export," to include also arms, munitions, etc. It was published on August 29, 1936, in the "*Vyriausybės Žinios*" (Government Gazette), No. 547-3816, and is as follows:

(Translation) . . . *"Amendment of the List of Goods Requiring a Licence for Their Export."*

(V.Z. No. 545-3792)

"The List of goods requiring a licence for their export is amplified as follows:

"(4) Arms, munitions, war material, aeroplanes and their parts and warships of any kind.

"This amendment is in force as from August 27, 1936.

"(Signed)

J. TUBELIS, *Prime Minister,*

V. MAŠIOLAITIS, *Chief of the Cabinet."*

The import of arms, munitions, etc., into Lithuania, is regulated by the Tariff Law of April 3, 1925, published on the same day in the "*Vyriausybės Žinios*" (Government Gazette) No. 187-1269.

The relevant paragraph of the said Law is #220, and it provides as follows:

(Translation) . . . "*It is prohibited to import:*

- "1. Powder and other explosive materials.
- "2. Fire-arms, shot-gun cartridges and air-guns.
- "3. Shells and cartridges other than for hunting guns.
- "4. Canes with daggers, rapiers, or other concealed weapons."

The effective prohibition of the transit of the said arms, munitions, war materials, etc., is to be realized by the provisions of the said two Laws—the Customs Law and the Tariff Law—and their amendments.

Thus, controlling the export, import and transit of arms, munitions, and war material by the system of Licences, the Lithuanian Government, in their reply of August 28, 1936, to the French Note, *formally declared* that they "will not issue any licence for the exportation of the said articles to a Spanish destination, Spanish possessions or Spanish Morocco."

## 18

## LUXEMBURG

I. ORDINANCE, DATED OCTOBER 29, 1935, MAKING THE EXPORT AND TRANSIT OF CERTAIN ARTICLES DEEMED TO BE ARMS, AMMUNITION, OR IMPLEMENTS OF WAR SUBJECT TO SPECIAL AUTHORIZATION <sup>1</sup>

We, Charlotte, . . .

In consideration of the Act of June 6, 1923, authorising the Executive to regulate the import, export and transit of certain objects, goods or merchandise, and the Act of May 10, 1935, establishing the powers of the Executive in the economic sphere;

Having regard to Article 27 of the Law of January 16, 1866, on the organisation of the Council of State, and considering that the case is urgent;

On the report of Our Minister of State, President of the Government, and of Our Director-General of Commerce and Industry, and after discussion by Our Government in Council.

Have decreed and do hereby decree as follows :

ARTICLE 1. The export and transit of the articles hereunder specified shall be conditional upon the production of a special permit issued in the name of Our Director-General of Commerce and Industry.

1. Rifles and carbines and their barrels.
2. Machine-guns, automatic rifles and machine-pistols of all calibres and their barrels.
3. Guns, howitzers and mortars of all calibres, their mountings, barrels and recoil mechanisms.
4. Ammunition for the arms enumerated under 1 and 2 above; filled and unfilled projectiles for the arms enumerated under 3 above, and prepared propellent charges for those arms.

<sup>1</sup> League of Nations, *Official Journal*, Spec. Suppl., No. 150 (1936), pp. 191-192.

5. Grenades, bombs, torpedoes and mines, filled or unfilled, and apparatus for their use or discharge.

6. Tanks, armoured vehicles and armoured trains; armour-plate of all kinds.

7. Aircraft, assembled or dismantled, both heavier and lighter than air, and their propellers or air-screws, fuselages, aerial-gun mounts and frames, hulls, tail units and under-carriage units.

8. Aircraft engines.

9. Revolvers and automatic pistols of a weight in excess of 1 lb. 6 oz. (630 grammes) and ammunition therefor.

10. Flame-throwers and all other projectors used for chemical or incendiary warfare.

11. Mustard gas, lewisite, ethyldichlorarsine, methyldichlorarsine, and all other products destined for chemical or incendiary warfare.

12. Powder for war purposes and explosives.

ART. 2. Our Director-General of Commerce and Industry is entrusted with the execution of this Ordinance, which shall enter into force on the second day after its publication in the *Memorial*.

## II. INSTRUCTION ISSUED BY THE PRESIDENT OF THE LICENSE COMMISSION APPLYING THE LAW TO THE SITUATION IN SPAIN, SEPTEMBER 3, 1936 <sup>2</sup>

### (Translation)

The Luxemburg Government having adhered to the proposition of non-intervention in the affairs of Spain, the exportation and transit of arms and munitions, as well as materials of war enumerated in Article 1 of the Ordinance of October 29, 1935, is forbidden.

Until the issuance of a new order, no authorization for exportation or transit will be delivered for merchandise above-mentioned.

<sup>2</sup> French text supplied by the British Foreign Office through the courtesy of the Department of State, Washington.

## 19

## THE NETHERLANDS

### I. LAW OF JUNE 7, 1919, RELATING TO FIREARMS AND MUNITIONS <sup>1</sup>

#### (Translation)

We, Wilhelmina, . . .

ARTICLE 1. For the purposes of this law:

1st. the term firearms is to include bombs, hand-grenades and similar weapons designed for explosion or for the diffusion of asphyxiating or poisonous gases, as well as flame-throwers;

<sup>1</sup> *Staatsblad van het Koninkrijk der Nederlanden*, 1919, No. 310.

2nd. the term firearms includes parts of firearms;

3rd. the term munitions includes parts of munitions.

For the purposes of this law, the following are to be considered chiefs of police :

1st. the burgomaster, in communities where there is no chief commissary or commissary of police;

2nd. the chief commissary or the commissary of police, respectively, in other communities.

ART. 2. We reserve to Ourselves the power to prohibit, by ordinary government measures, the importation, exportation, transit and circulation of firearms and munitions.

By rules to be laid down by ordinary government measures, exemption may be granted from the prohibition envisaged in the foregoing paragraph. Conditions may be attached to the exemption, as well as the requirement that surety be given for the fulfilment of these conditions.

ART. 7. By rules to be laid down by ordinary government measures, a charge to cover the costs of administration and surveillance may be laid upon persons who apply for an authorization under this law, or for a permit for importation, exportation, transit or circulation by virtue of ordinary government measures as provided in Article 2.

The authorization or the permit and the arms and the munitions to which they have reference must be produced at the first request of any of the officials designated in Article 14.

ART. 8. The chiefs of the local police are to conduct themselves in the execution of this law according to directions issued by or on behalf of our Minister of Justice.

They are required to maintain a register and therein to make entries of each authorization granted by them or on appeal from their decision by Our Commissary in the province, as provided in Article 3, as well as of every suspension or rescission of such authorization.

Our Minister of Justice may issue instructions with regard to the registration of persons who are in the possession of firearms.

ART. 12. He who violates a prohibition set up by or by virtue of this law is to be punished with confinement of at most two months or with a fine of at most two dozen florins. However, if he knows or reasonably should suspect that the weapon with relation to which the act was performed was a bomb, a hand-grenade, or a similar weapon designed for the diffusion of asphyxiating or poisonous gases, a flame-thrower, a cannon, a machine-gun or a part of any one of these weapons, imprisonment of at most four years or a fine of at most six dozen florins is to be imposed.

Violations of Articles 4 or 7 second paragraph, or failure to fulfil an order, as stipulated in Article 9 are to be punished with confinement of at most two months, or by a fine of at most two dozen florins.

The weapons acquired by means of the act, or by means of which, or in relation to which the act was performed may be declared forfeited. The



destruction or the putting out of commission of the weapons may be ordered in the sentence.

The acts made punishable by this law are to be regarded, in case the penalty of imprisonment is attached, as misdemeanors and moreover as contraventions [*overtredingen*].

ART. 13. In the event that an act made punishable by this law was committed by or on behalf of a corporation, a co-operative or other juridical person having a union or foundation, the criminal prosecution is to be directed and the penalty pronounced against the members of the governing board.

No penalty shall be pronounced against a director of whom it shall appear that the act was performed without his participation.

ART. 14. The surveillance over the distribution of firearms and munitions among the people, and the detection of the acts made punishable by this law are charged upon the persons indicated in Article 8 of the Code of Criminal Procedure and in Article 50 of the law of May 23, 1899 (*Staatsblad* no.128), and also upon the officers in command of the corps accompanying explosive materials, the mounted police, customs and excise officers, officers clothed with military authority, indicated by virtue of Article 7 of the law of May 23, 1899 (*Staatsblad* no.128), as well as upon all other officials designated for this purpose by Our Minister of Justice.

The functionaries specified in the foregoing paragraph shall have at all times, in the exercise of the surveillance imposed upon them, together with the persons accompanying them, free access to all places where firearms and munitions may reasonably be suspected to be.

Should access be refused them, they may procure it, if need be, by calling in the military.

If the place is also a dwelling house, or only accessible through a dwelling house, then they are not to enter against the will of the occupant except upon a general or special written order from the chief of the local police or in the presence of that chief, or of the judge of the police court, or of a commissary of police.

Of this entry a *procès-verbal* is to be drawn up by him, a copy of which is to be communicated within twice twenty-four hours to the person whose house has been entered.

ART. 15. The officials designated in Article 14 are at all times competent to seize, to institute the necessary investigation looking toward seizure, and to demand the handing-over of firearms which may serve to reveal the truth, or as to which forfeiture, destruction or putting out of commission may be ordered.

ART. 16. This law is not applicable to firearms which cannot be made capable of use as such, or which are to be classed as antiquities.

ART. 17. Article 3, paragraph one, under 7th of the law of May 9, 1890 (*Staatsblad* no.81), amended by the Bird Law [*Vogelwet*] of 1912, is to read as follows:

"7th. to transport no other weapons than those that are so packed that they cannot be applied to immediate use, on condition, so far as firearms are concerned, that the transportation is covered either by a receipt issued by the chief of police of the community where the transportation begins, or by a permit of importation, exportation, transit or circulation."

ART. 18. We shall fix the point or points of time at which the stipulations of this law shall respectively become effective.

This law may be referred to as the "Firearms Law 1919."

## II. DECREE OF JULY 11, 1919, CONTAINING RULES FOR THE EXECUTION OF THE FIREARMS LAW 1919<sup>2</sup>

(Translation)

We Wilhelmina, . . .

ARTICLE 1. The expressions occurring in this decree have the same meaning as they have in the Firearms Law 1919.

ART. 2. Importation, exportation and transit of firearms and munitions are forbidden.

The preceding paragraph is not applicable to importation, exportation or transit:

- 1st. by or on behalf of the Rijk;
- 2nd. of firearms (including not more than twenty-five cartridges for the weapons in the aggregate) by persons who, otherwise than in accordance with Article 3, first paragraph, under 7th of the law of May 9, 1890 (*Staatsblad* no.81), may have weapons upon them on the highway or in certain places accessible to the public.
- 3rd. which has been permitted by or on behalf of Our Minister of Justice, and which takes place with the observance of the conditions which may have been stipulated at the time the permission was accorded.

ART. 3. The circulation [*vervoer*] of bombs, hand-grenades and similar weapons designed for explosion or for the diffusion of asphyxiating and poisonous gases, flame-throwers, cannons, machine-guns and part of any of these firearms is forbidden.

The preceding paragraph is not applicable with regard to the circulation of any of the firearms named therein:

- 1st. on behalf of the public service;
- 2nd. that is covered by a permit of importation, exportation or transit;
- 3rd. which has been permitted by or on behalf of Our Minister of Justice, and which takes place with the observance of the conditions which may have been stipulated at the time the permission was accorded.

ART. 4. By a written permit, freedom may be obtained from the prohibition set up by Articles 2, first paragraph, and 3, first paragraph:

<sup>2</sup> *Staatsblad van het Koninkrijk der Nederland*, 1919, No. 474.

- 1st. as far as concerns importation, exportation or transit of firearms or munitions on behalf of the public service, through the head of the department of the general government involved;
- 2nd. otherwise, through Our Commissary in the province in which the interested party resides, or, if the latter does not reside in the country, by Our Commissary in the province of Utrecht.

The permit is to be drawn up according to a model established by Our Ministry of Justice.

ART. 5. The application for a permit, which can be issued by Our Commissary in any of the provinces, is to be drawn up according to a model established by Our Minister of Justice. Application blanks are obtainable from the Clerk of the province, upon payment of twenty-five cents apiece.

Upon making the application envisaged in the preceding paragraph, the interested party chooses for the whole transaction a fixed domicil in the province within which the application is made.

The applicant is to furnish so far as possible the information and answers requested of him by or on behalf of Our Commissary in the province.

ART. 6. To defray the costs of administration and surveillance a charge may be made upon those to whom a permit is granted by Our Commissary in any of the provinces, to wit:

- 1st. for a permit for importation, one florin per kilogram of weight of the firearms to which the permit applies, with their packing; but not less than one florin;
- 2nd. otherwise, twenty-five cents per kilogram of weight of the firearms to which the permit applies, with their packing; but not less than one florin.

The proceeds of the levy shall go to the benefit of the province.

ART. 7. Our Commissaries in the provinces are to conduct themselves in the execution of this law according to the directions of Our Minister of Justice.

They are required to maintain a register, and to make a memorandum therein of every permit granted by them in the terms of this decree.

ART. 8. Application for a licence for the transportation of firearms is to be drawn up according to a model established by Our Minister of Justice. Application blanks are obtainable at the places by the chiefs of the local police, upon the payment of ten cents apiece.

The licence is to be drawn up according to a model established by Our Minister of Justice.

To defray the costs of administration and surveillance, a charge of twenty-five cents may be made for each weapon to which the licence applies. The proceeds are for the benefit of the community.

For transportation of firearms on behalf of the public service, the application blank and the licence are to be issued free.

. . . . .

Our Minister of Justice is charged with the execution of this decree, which is to be placed in the *Staatsblad* and copies whereof shall be sent to the *Raad van State* and to the *Algemeene Rekenkamer*.

### III. LAW OF JULY 8, 1932, TO AMEND AND AMPLIFY THE FIREARMS LAW OF 1919<sup>3</sup>

(Translation)

We, Wilhelmina, . . .

ARTICLE 1. Article 1, paragraph 1, 1st section of the Firearms Law 1919 is amended to read as follows:

"1st. the term firearms is to include bombs, hand-grenades and similar weapons designed for explosion or for the diffusion of poisonous, asphyxiating or defenseless-making gases, flame-throwers, as well as alarm pistols and other similar objects for menacing or threatening, according to rules to be established by ordinary government measures;"

ART. 8. In Article 12, first paragraph of this law, in place of "Asphyxiating or poisonous gases" is to be read: "poisonous, asphyxiating or defenseless-making gases" [*weerloosmakende gassen*].

ART. 9. This law is to become effective at a time to be fixed by Us.

We order and charge that these presents be placed in the *Staatsblad*, and that all Ministerial Departments, Authorities, Colleges and Officials enforce them precisely.

### IV. DECREE RELATING TO CARRIAGE OF MATERIALS OF WAR AND VOLUNTEERS TO SPAIN, MARCH 4, 1937. (See Appendix VII—The Netherlands).

### V. DECREE PROHIBITING EXPORTATION OF WEAPONS TO SPAIN, MARCH 30, 1937<sup>4</sup>

(Translation)

We Wilhelmina . . .

ARTICLE 1. In this decree the following words are to be understood to have the following meanings:

a. Spain: Spanish territory within and without Europe, and the Spanish Zone in Morocco.

b. Weapons:

Category I:

1. rifles and carbines, as well as barrels for such;

<sup>3</sup> *Staatsblad van het Koninkrijk der Nederlanden*, 1932, No. 345. Note—It is stated that no licenses will be granted for Spain under this and preceding laws while the Non-Intervention Agreement remains in force. *Hemming Report*, p. 14.

<sup>4</sup> *Nederlandsche Staatscourant*, No. 63, April 5, 1937.

2. machine-guns, automatic rifles, and automatic pistols, of whatever caliber, as well as barrels for such;
3. guns, howitzers and mortars of all calibers, as well as carriages, breeches [*schietbuizen*] and recoil brakes for such;
4. ammunition for the weapons mentioned under 1 and 2 above; projectiles, filled or unfilled, for the guns mentioned under 3, and their charges;
5. grenades, bombs, torpedoes and mines, whether charged or not, together with the instruments for throwing, launching or laying them, or causing them to explode;
6. tanks, armored trains or vehicles, together with all kinds of armor plate.

Category II:

War vessels of all sorts, including airplane carriers, and submarines.

Category III:

1. Aircraft, mounted or dismantled, heavier or lighter than air, as well as propellers, fuselages, gun mounts, hulls, tail units and under-carriage units;
2. Airplane motors.

Category IV:

Revolvers and automatic pistols, weighing more than 630 grams, as well as ammunition for such weapons.

Category V:

1. Flame-throwers, and all other contrivances for the conduct of chemical warfare, or the causing of fires;
2. Mustard gas, lewisite, ethyldichlorarsine, methyldichlorarsine, and all other substances designed for the conduct of chemical warfare, or the causing of fires;
3. Gunpowder and explosive substances.

Category VI:

All objects that are apparently parts of the weapons referred to in Categories I-V.

ART. 2. The exportation of weapons from the Kingdom to Spain is forbidden.

ART. 3. This decree becomes effective for The Netherlands, the Netherlands Indies, Surinam and Curaçao on the day after its publication in the place in question.

Our Ministers above-mentioned are charged with the execution of this decree, which is to be published in the *Nederlandsche Staatscourant* and the corresponding publications of the Netherlands Indies, Surinam and Curaçao.

## NORWAY

I. LAW OF JUNE 28, 1927, CONCERNING IMPORTATION, EXPORTATION, OR TRAFFIC IN ARMS, AMMUNITION AND PARTS THEREOF <sup>1</sup>*(Translation)*

## CHAPTER I. Introductory Stipulations.

§ 1. By arms, for the purposes of this Law is understood:

(a) When loaded with powder or compressed air, all automatic or other arms, designed to launch projectiles (bullets) of every sort, compact or hollow, loaded or unloaded, filled with fluid or gas (grenades and bombs and hand-grenades), buckshot, harpoons, arrows, etc., for war purposes or for hunting or sporting purposes.

(b) Arms or apparatus for projecting gas, signal lights, rockets or the like.

(c) Bayonets of every kind and length, also cutting and piercing weapons with a blade length of 35 cm. or more. Hand weapons or weapons of 15 mm. caliber or less.

§ 2. By parts of arms is understood all parts of the arms mentioned above in paragraph 1 from which the arm is or can be constructed or without which the arm is rendered useless or cannot be used for its purpose.

§ 3. By ammunition, for the purpose of the above-mentioned Law, is understood:

(a) Any projectile designed to be projected by the arms mentioned in paragraph 1, of every sort and caliber, filled or unloaded, or filled with gas; further, buckshot, harpoons and arrows for air rifles.

(b) Hand-grenades or rifle-grenades filled with powder or other explosives or gas.

(c) Prepared cartridges, that is to say cartridge cases whether paper or metal with attached projectile or buckshot load, also driving loads and ignition units (ignition cartridge, and ignition case).

(d) Powder of every kind, in bulk or packed in small packages or in cartridge cases.

(e) Explosives of every kind, in bulk or in the form of cartridges, e.g., dynamite, various kinds of safer explosives, etc.

(f) Poisonous gases that can be used by the arms or ammunition mentioned in paragraph 1, sec. (b), or paragraph 3, sec. (a).

(g) Ignition appliances of every kind.

§ 4. By component parts of ammunition are meant any parts used for the manufacture of the cartridges mentioned in Article 3(c).

§ 5. Importation, exportation or circulation of arms and ammunition, as well as parts thereof, is prohibited, except as provided for in this Law, or in accordance with the rules issued in virtue of this Law.

The King, or the one authorized by him, may grant exemptions from this

<sup>1</sup> *Norsk Lovtidende, 2den afdeling, 1927, p. 424.*

Law and the above-mentioned regulations, if the exemptions refer to single units of the arms, ammunition and their parts as described in Articles 1 to 4.

§ 7. Applications for an import permit must be sent to and acted upon by the authority which the King has designated, before the order for shipment is given abroad.

A fee, ordered by the King, must be paid to the Treasury for an import permit. Government institutions do not have to pay such an import fee.

#### CHAPTER III. Exportation.

§ 12. Any person wishing to send arms or ammunition or parts thereof to foreign countries, or to take such goods with him when departing from this country, must apply for an export permit.

§ 13. Application for an export permit shall be sent to the authority mentioned in Paragraph 7.

If permission for exportation is given, this authority will issue a written export permit stating the applicant's name and information concerning the amount of the goods and what kind, the destination of the export, and the manner in which it is being sent, and so forth.

The export permit shall be given to the custom authorities at the clearing of the ship.

Applications for the prolongation of an export permit, as a rule made out for a short period of time, necessitate the payment of no fee.

§ 14. More detailed rules and possible limitations concerning exportation may be issued by the King or by the Department which he designates.

The same authority may also make exceptions from the rules in Paragraph 12, or make special rules regarding arms or ammunition for personal use, which are brought by individuals on their departure from this country.

#### CHAPTER V. Miscellaneous.

§ 25. If international agreements should make it necessary, the King may order that this law and any special provisions referring to this law be enforced for war materials other than mentioned in the law.

#### CHAPTER VI. Stipulations Regarding Penalties.

§ 26. Disobedience of this law or of the provisions made with reference to the law will be punished with a fine or imprisonment up to three months, if the case does not warrant a more severe punishment.

Arms and ammunition and parts thereof which are imported or sought to be imported contrary to the rules made in this law or of the provisions made with reference to the law can be ordered given over to the Treasury.

The Department concerned, if it finds it warranted, can at any time revoke a previously given authorization to arms or ammunition dealers.

## II. ROYAL RESOLUTION, SEPTEMBER 11, 1936 <sup>2</sup>

### (Translation)

With reference to the Law of June 28, 1927, Paragraph 25:

It is herewith ordered that the above-mentioned law and the provisions

<sup>2</sup> *Norsk Lovtidende, 2nen avdeling*, 1936, p. 606.

adopted with reference to it shall be enforced for all kinds of airplanes, assembled or dismantled, also all parts or accessories for the same.

### III. NOTIFICATION BY THE WAR DEPARTMENT, OCTOBER 3, 1936 <sup>3</sup>

(Translation)

Transit of War Materials and the Like Over Norwegian Territory.

1. The War Department herewith prohibits, in accordance with Law No. 1 of August 18, 1914, until further notice, transit over Norwegian territory to Spain, Spanish Possessions, or the Spanish Zone of Morocco, such arms and ammunition or war materials (airplanes, etc.) as are mentioned in the Law of June 28, 1927, Chapter One, Paragraphs 1-4, and also in the Royal Resolution of September 11, 1936.

2. This prohibition shall go into effect at once.

### IV. PROVISIONAL ARRANGEMENT AUTHORIZING THE MINISTRY OF FOREIGN AFFAIRS TO PROHIBIT THE EMPLOYMENT OF NORWEGIAN VESSELS FOR THE TRANSPORTATION OF ARMS, MUNITIONS AND AIRCRAFT OR PARTS THEREOF TO ONE OR SEVERAL FOREIGN COUNTRIES, NOVEMBER 27, 1936 <sup>4</sup>

In pursuance of Section 17 of the Constitution it is ordered:

- I. The Ministry of Foreign Affairs may prohibit the employment of Norwegian vessels for the transportation of arms, munitions and aircraft or parts thereof to one or several countries.
- II. Transgression of such prohibition is punished by fine or imprisonment up till 3 months.
- III. This arrangement comes into force at once.

### V. REGULATION PROHIBITING THE EMPLOYMENT OF NORWEGIAN VESSELS FOR THE TRANSPORTATION OF ARMS, MUNITIONS AND AIRCRAFT OR PARTS THEREOF TO SPAIN OR TO COUNTRIES BELONGING TO SPAIN, NOVEMBER 27, 1936 <sup>5</sup>

In pursuance of the provisional arrangement of November 27, 1936, the Ministry of Foreign Affairs has on the same day issued the following regulation:

It is until further notice prohibited to employ Norwegian vessels for the transportation of arms, munitions and aircraft or parts thereof to Spain or to countries belonging to Spain.

This regulation comes into force at once.

<sup>3</sup> *Ibid.*, p. 619.

<sup>4</sup> *Collection of Norwegian Laws, &c., Published for the use of the legations and the consulates, 1936-1940, I. 1936 (Oslo, 1937), p. 111.*

<sup>5</sup> *Ibid.*, p. 113.



VI. SUPPLEMENTARY PROVISIONAL ARRANGEMENT, NOVEMBER 27, 1936<sup>6</sup>

In pursuance of Section 17 of the Constitution it is hereby provided as follows:

- I. In connection with the prohibition dealt with in the provisional arrangement of November 27, 1936, section I, the Ministry of Foreign Affairs may issue the necessary regulations to render the prohibition effective—including regulations concerning the right and duty to nullify completely contracts of affreightments if the charterer is employing or has employed the vessel concerned in a manner which is in conflict with the prohibition.
- II. Contravention of such regulations shall be punishable by fine, or by a term of imprisonment not exceeding 3 months.
- III. This arrangement comes into force at once.

## VII. LAW AUTHORIZING PROHIBITING NORWEGIAN SHIPS BEING USED TO TRANSPORT ABROAD PERSONS INTENDING TO TAKE PART IN WAR, TOGETHER WITH ARMS, APRIL 16, 1937 (See Appendix VII—Norway)

VIII. ROYAL RESOLUTION REGARDING THE SAME, APRIL 16, 1937 (*Ibid.*)

<sup>6</sup> *Ibid.*, p. 131.

## 21

## POLAND

I. LAW RELATING TO THE MANUFACTURE AND TRADE IN ARMS, OCTOBER 27, 1932<sup>1</sup>

## ARTICLE 1.

1. "Arms" within the sense of the present Law shall be deemed to mean any device for the purpose of causing bodily injury directly or indirectly.
2. "Ammunition" shall be deemed to mean cartridges or projectiles for a fire-arm, and explosive projectiles of any kind.
3. Finished or processed "essential parts" of arms or of ammunition shall be considered to be arms or ammunition. It shall be determined by executive regulation what parts are to be considered essential parts.
4. Explosives shall be deemed to mean solid, liquid or gaseous bodies which develop destructive force through a physical (mechanical) or chemical agent.
5. The Minister of the Interior, together with the Minister of War and the Minister of Trade and Industry, shall have power to extend the provisions of the present Law by decree, in whole or in part, to objects or appliances or to essential parts of explosives, the use of which may constitute a menace to public security.

## ART. 2.

1. "Military arms" shall be deemed to mean arms which the military use

<sup>1</sup> League of Nations, "National Control," *op. cit.*, pp. 160-164. Note—The Polish note of Aug. 27, 1936, to the French Government advised of the prohibition of exports to Spain. *Hemming Report*, p. 14.

for military purposes or which can be used by the military for military purposes.

2. A list of military arms shall be drawn up by decree for the Minister of the Interior.

#### ART. 3.

The provisions of the present Law shall not apply to side-arms; but the Minister of the Interior, together with the Minister of War, and the Minister of Trade and Industry, may extend these provisions by decree, in whole or in part, to particular categories of side-arms.

#### ART. 12.

1. Arms, ammunition and gunpowder (Article 7) may be delivered only to persons entitled under the present Law to obtain them.

2. Paragraph 1 shall not apply to the external trade in arms.

#### ART. 13.

The Minister of the Interior, the Minister of War and the Minister of Trade and Industry may, by decree:

(a) Prohibit trade in certain categories of arms and ammunition;

(b) Restrict the trade in certain categories of arms and ammunition, or subject it to special conditions.

#### ART. 15.

1. Undertakings engaged in the trade in arms (Article 4, Paragraph 1) shall be subject to supervision by the Administration.

2. Such undertakings shall be supervised by the organs of the General Administration and also, in the case of undertakings engaged in the trade in military arms and ammunition, by the military authorities.

#### ART. 32.

Military arms, with the exception of arms for personal use, may be exported from the territory of the Polish State only by authorisation of the Minister of War or the authorities to which the latter has delegated the right to issue such authorisation.

#### ART. 37.

Trade in explosives may not be conducted in a professional capacity without administrative authorisation.

#### ART. 38.

The authorisations referred to in Article 37 shall be issued by the Voivodie authorities of the General Administration.

## II. ORDER OF THE MINISTER OF FOREIGN AFFAIRS CONCERNING THE TRANSPORT OF MATERIAL OF WAR TO SPAIN, DECEMBER 10, 1936<sup>2</sup>

(Translation)

Considering that on August 22, 1936, the Government of Poland adhered to the accord on non-intervention in the affairs of Spain and has forbidden

<sup>2</sup> French text supplied by the British Foreign Office through the courtesy of the Department of State, Washington. Polish text in *Monitor Polski*, No. 288, December 11, 1936.

the direct and indirect exportation, re-exportation and transit to a Spanish destination, to the Spanish possessions or the Spanish zones in Morocco, of all arms, munitions and materials of war, as well as all aircraft mounted or dismantled and of all vessels of war,—no protection will henceforth be accorded by vessels of war on the high seas nor by the diplomatic and consular representatives of the Republic abroad:

(a) to merchant vessels navigating under the Polish flag, and

(b) to aircraft bearing marks of Polish registration transporting to Spain, to the Spanish possessions or to the Spanish zones in Morocco military arms of every category, munitions, grenades, bombs and explosives, as well as all other implements of war.

## 22

## PORTUGAL

DECREE REGARDING EXPORTATION, RE-EXPORTATION OR TRANSIT OF MATERIAL OF WAR TO A DESTINATION IN SPAIN, SPANISH POSSESSIONS OR THE SPANISH ZONE OF MOROCCO, AUGUST 27, 1936<sup>1</sup>

*(Translation)*

In consideration of the engagement made by the Portuguese Government in the notes of August 21, 1936, which have been delivered to the Ambassador of His Britannic Majesty and to the Minister Plenipotentiary of the French Republic;

In consideration of the reservations and conditions to which the said engagement was subjected;

Employing the faculty conferred by the second part of number 2 of Article 109 of the Constitution, the Government decrees and I proclaim as law, that which follows:

ARTICLE 1. Exportation, direct or indirect, re-exportation, or transit to a destination in Spain, the Spanish Possessions or the Spanish Zone of Morocco of arms, munitions and material of war, as well as aircraft, mounted or dismantled and warships, are forbidden in all Portuguese territory.

ART. 2. The Portuguese Government reserves the right to suspend immediately the prohibition mentioned in the previous article, in the case that it should establish that one of the countries adhering to the principles established by the notes of the Government of His Britannic Majesty and of the French Republic, notes dated August 15, 1936, practices directly, or allows to be practiced publicly, one of the following deeds:

(a) The enlistment of volunteers for the forces in conflict, even if these enlistments are made in an indirect manner;

(b) The opening of subscriptions for the continuance of the war, or the sending of sums publicly collected for that purpose.

ART. 3. The present decree goes into force immediately and will continue

<sup>1</sup> Decree-Law No. 26/935. *Colecção de Legislação Portuguesa de 1936*, p. 289.

as long as the prohibition mentioned in Article 1 is effectively applied by the German, British, French, Italian and Russian Governments in their respective territories.<sup>2</sup>

<sup>2</sup> See Appendix V: 22, III, for a revision of Article 3.

## 23

## ROUMANIA

ROYAL DECREE, No. 2032, PROHIBITING THE EXPORTATION OF WAR MATERIALS TO SPAIN, SEPTEMBER 2, 1936<sup>1</sup>

(Translation)

Carol II, . . .

Upon the report of Our President of the Council of Ministers and the Minister of Defense, under No. 2922 of September 1, 1936;

Considering the Journal of the Council of Ministers under No. 1879 of September 1, 1936,

We have decreed and do decree:

ARTICLE 1. All direct or indirect export, re-exportation or transit of all arms, munitions and war materials, as well as warships, for Spain, the Spanish Possessions or the Spanish Zone of Morocco, is prohibited.

ART. 2. The measures provided in Article 1 shall apply also to contracts in the course of execution.

ART. 3. The above provisions shall enter into effect upon the publication of this decree.

ART. 4. Our Ministers of Finance, of Interior, and of Industry and Commerce are charged with the carrying out of this decree.

<sup>1</sup> Supplied by the Government of Roumania. Note—The Non-Intervention Committee was informed by the Roumanian minister in London that while no law establishes a classification of arms, the terms of the decree should be considered as covering all classes. *Hemming Report*, p. 14.

## 24

## SWEDEN

I. ROYAL DECREE PROHIBITING THE EXPORTATION OF CERTAIN COMMODITIES, DECEMBER 19, 1930<sup>1</sup>

(Translation)

Since His Royal Majesty on the 4th of October, 1929, issued new customs regulations (No. 316), and the customs administration in accordance with His Majesty's permission has proclaimed the customs tariff with the statistical list of goods, and also the "tare-tariff," His Majesty has found it good to decree as follows:

<sup>1</sup> *Svensk Författningssamling*, No. 437, 1930, pp. 1207 et seq.

§ I. No. 1. Exportation to a foreign place may not be made for the following kinds of goods with the numbers indicated in the statistical list of commodities:

*Statistical No.*

ex 623	Gun cotton.
624	Smokeless powder.
625-626	Dynamite and other explosives not elsewhere certified.
627-628	Percussion caps.
630	Fuse cord (other than black powder cords) and ignition pipes.
ex 1396	Barbed wire.
ex 1405-1410	Armor plates.
ex 1922-1923	Aircraft, mounted, for military use.
1929-1940	Warships.
ex 1966	Telemeters and parts thereof.
ex 1993	Foils, sabres, swords, bayonets, cutlasses, and similar weapons, with or without scabbards, and parts thereof.
1994-1995	
ex 1996	Revolvers and pistols, also with accessories; finished parts of such firearms.
1997	Automatics, with or without magazines, also with contraptions for firing with shoulder supports, of a caliber not exceeding 6.5 mm. and the barrel not exceeding 10 cm. in length; also finished parts of such firearms.
1998	Others, and finished parts thereto, except range pistols and air pistols, and finished parts thereof.
	Rifles, also with accessories, automatic rifles and machine guns without mountings; also finished parts of such firearms.
1999	Military rifles and carbines, and finished parts thereof.
2000	Sporting guns, rifled, of a caliber of 6 mm. or over, even with a fixed barrel; and finished parts thereof.
ex 2001	Other sporting guns, and finished parts thereof, except smooth bore guns, and finished parts thereof.
2002	Machine-guns, automatic rifles (machine-rifles), and automatic pistols unmounted; also finished parts of such firearms.
ex 2003	Other firearms and finished parts thereof, except range and instructional rifles, air guns and spring guns, and finished parts thereof.
	Implements of war not elsewhere specified, and detached parts.
2004	Armor plate; other kinds of plate.
2005	Cannons and howitzers with a caliber of less than 15 cm.
2006	The same of 15 cm. or over.

*Statistical No.*

2007	Mortars.
2008	Machine-gun mountings.
2009	Mountings other than those for machine-guns; also limbers and ammunition wagons.
2010	Sighting and firing apparatus.
2011	Bomb (grenade) throwers, and apparatus for shooting bomb and torpedoes.
2012	Apparatus for shooting with a machine-gun from an air-plane.
2013	Tanks and armored automobiles.
2014	Others.
ex 2017	Inflammable substances not elsewhere specified, for projectiles and firearms, loaded.
2018	Cartridges, other than cartridges for small shot.
ex 2019	
2020	
ex 2021	Cartridge cases for artillery pieces and other cartridge cases with percussion caps.
2022	Ammunition not elsewhere specified and parts thereof; other kinds of projectors for hand firearms; projectiles for cannons, howitzers and mortars.
2023	
2027	The same unloaded.
2028	The same loaded.
2029	Hand grenades, whether loaded or not.
2030	Mines and submarine bombs, whether loaded or not.
2031	Bombs, other than submarine bombs.
2032	Torpedoes, whether loaded or not.
2033	Others.

No. 2. Exportation to a foreign place may not be made of such parts or accessories to airplanes as are undoubtedly intended for military use.

§ II. The punishments provided for in the law of March 3, 1916, shall be applied to the violations of the prohibitions mentioned in this decree.

This decree shall go into effect January 1, 1931.

By this decree, the proclamation of June 20, 1918 (No. 411), relating to the prohibition of the exportation of certain goods ceases to be in force.

II. ROYAL DECREE No. 67, OF MARCH 3RD, 1933, AMENDING ARTICLE I OF DECREE No. 437, OF DECEMBER 19TH, 1930, PROHIBITING THE EXPORT OF CERTAIN GOODS <sup>2</sup>

His Majesty has been pleased to decree that Article I of the Decree of December 19th, 1930, prohibiting the export of certain goods shall be amended as follows:

<sup>2</sup> League of Nations, *Official Journal*, Spec. Suppl., No. 150 (1936), p. 263.

ARTICLE I. 1. (Amended by the Decree of October 18th, 1935.)

2. The export of parts or accessories for aircraft to foreign countries is likewise prohibited.

3. The provisions of paragraphs 1 and 2 shall not prevent aircraft operating a commercial service or aircraft of foreign nationality authorised to fly over Swedish territory, which arrives in the country from abroad, from leaving the country with the necessary accessories.

The decree shall come into force on the day following its publication in the *Swedish Legal Gazette*.

### III. ROYAL DECREE NO. 560, OF SEPTEMBER 29TH, 1933, ANNULLING THE PROHIBITION TO EXPORT CERTAIN GOODS <sup>2</sup>

His Majesty has been pleased to decree that the provisions of paragraph 1 of Article I of the Decree No. 437, of December 19th, 1930, regarding the Prohibition to export Certain Goods shall cease to apply to barbed wire (Statistical No. 1396) and to cartridges for humane killers (Statistical No. 2019), as from October 1st, 1933.

### IV. ROYAL DECREE OF OCTOBER 18TH, 1935, AMENDING ARTICLE I, PARAGRAPH I, OF DECREE NO. 437, OF DECEMBER 19TH, 1930, PROHIBITING THE EXPORT OF CERTAIN GOODS <sup>4</sup>

His Majesty has been pleased to decree that paragraph 1 of Article I of the Decree of December 19th, 1930, prohibiting the export of certain goods shall be amended as follows:

ARTICLE I. 1. It is prohibited to export to foreign countries the goods of the following categories which appear in the Customs tariff with statistical nomenclature now in force under the following statistical numbers:

#### *Statistical No.*

ex 455:2	Phosgene (oxychloride of carbon).
ex 515	Diphenylaminochlorarsine (Adamsite), diphenylcyanarsine, diphenylchlorarsine, ethyldichlorarsine, phenyldichlorarsine, chlorovinylchlorarsine (Lewisite) and methylchlorarsine.
ex 540	Benzyl bromide, benzyl iodide, benzyl chloride, bromacetone, benzyl cyanobromide, cyanogene bromide, methyloethylbromide, ketone, ethylbromacetate, methylbromacetate, methylic ether of cyanocarbonic acid, dibromated dimethyldiether, methylbromomethylketone,

<sup>2</sup> *Ibid.*, p. 264.

<sup>4</sup> *Ibid.*, pp. 262-263. Note—No licenses for Spain were issued after Aug. 11, 1936. *Hemming Report*, p. 15.

*Statistical No.*

		dichlorethylsulphide (mustard gas, yperite), dichlorated dimethylic ether, dichlorated phenylcarbylamine, iodacetone, ethyliodacetate, chloracetophenone, chloracetone, chlorocyaniccyanogen chloride, formate of dichloromethylochlorine, ethylchloroformate, monochlorous methylchloroformate, trichloromethyl chloroformate (diphosgene, chloroformate of methylperchlorate), chloropicrine (chloroform nitrate), ethylchlorosulphonate, methylchlorosulphonate, methylbromoethylketone, nitrobenzyl chloride (ortho-), palite (chloroformate of chloromethyl), carbon tetrachlorosulphide, thiophosgene and bromides of xylyl.
	622	Black powder (saltpetre powder).
ex	623	Guncotton.
	624	Smokeless powder.
	625- 626	Dynamite and and other explosives not elsewhere specified.
	627- 628	Percussion caps.
	630	
ex	1405-1410	Armor-plates.
	1922-1923	Aircraft.
	1929-1940	Warships.
ex	1966	Telemeters and parts thereof.
ex	1993	} Foils, sabres, swords, bayonets, cutlasses and similar weapons, with or without scabbards and parts thereof.
	1994-1995	
ex	1996	} Revolvers and pistols, with or without accessories; finished parts thereof; automatic, with or without magazine, even fitted with stock, of calibre exceeding 6.5 mm. and barrels exceeding 10 cm. in length; finished parts therefor.
	1997	
ex	1998	Other, and finished parts, except range pistols and air pistols and finished parts thereof.
		Rifles with or without accessories, and automatic rifles and unmounted machine-guns; finished parts therefor.
	1999	Military rifles and carbines; finished parts therefor.
	2000	Sporting-guns, rifled, of calibre 6 mm. or over, even with fixed barrel; finished parts therefor.
ex	2001	Other sporting guns and finished parts therefor, except smooth-bore guns and finished parts therefor.
	2002	Machine-guns, automatic rifles and automatic pistols, unmounted; finished parts therefor.
ex	2003	Other fire-arms and finished parts therefor, except range and instructional rifles, air-guns and spring-guns, and finished parts therefor.
		Implements of war not elsewhere specified and detached parts:



*Statistical No.*

2004	Armor-plate.
	Other.
	Guns and howitzers of calibre :
2005	Less than 15 cm.
2006	15 cm. or over.
2007	Mortars.
2008	Machine-gun mountings.
2009	Mountings other than those for machine-guns; limbers and ammunition wagons.
2010	Sighting and firing apparatus.
2011	Bomb-throwers and apparatus for dropping bombs and torpedoes.
2012	Interrupter gears.
2013	Tanks and armoured cars.
2014	Other.
2016	Shot and bullets, lead.
2017	Inflammable substances not elsewhere specified for pro- jectiles and fire-arms.
	Cartridges :
	For small arms and machine-guns :
2018	For military use.
ex 2019	Other, except cartridges for small shot and cartridges for humane killers;
2020	For artillery.
	Cartridge cases :
	For small arms and machine-guns :
2021	For military use;
2022	Other.
2023	For artillery.
	Ammunition not elsewhere specified and parts thereof :
	Projectiles for fire-arms :
2024	For army rifles, machine-guns and similar fire-arms.
2025	For pistols and revolvers of calibre exceeding 6.5 mm.
2026	Other.
	Other categories :
	Projectiles for guns, howitzer and mortars.
2027	Unloaded.
2028	Loaded.
2029	Grenades, loaded or unloaded.
2030	Submarine mines and bombs, loaded or unloaded.
2031	Bombs other than submarine bombs.
2032	Torpedoes, loaded or unloaded.
2033	Other.

This decree shall come into force on the day following its publication in the *Swedish Legal Gazette*.

## TURKEY

DECREE PROHIBITING THE EXPORTATION, RE-EXPORTATION AND TRANSHIPMENT OF ARMS, MUNITIONS AND MATERIALS OF WAR, NO. 2/5262, SEPTEMBER 1, 1936<sup>1</sup>

*(Translation)*

Whereas the Spanish rebellion recently has taken a turn for the worse, thereby endangering European peace, the French Government has proposed and other interested Powers have accepted the proposal that direct or transshipments of war materials to either side of the Spanish warring factions be prohibited. Because of this exceptionally grave situation prevalent in Spain, our Government has also accepted this proposal. In order to fulfill the dictates of our undertaking and to prevent delay, thereby creating a precedent, the Cabinet, on the proposal of the Foreign Office, decided to give the French Embassy an appropriate notice of our acquiescence and to prohibit from the day of this notification:

1. The export, re-export or trans-shipment from or through Turkey of any and all sorts of arms, ammunition and related war materials, finished aircraft or parts thereof, to Spain and her dependencies including Spanish Morocco. The ban is to extend to the dispatch of war vessels as well,

2. Deliveries in keeping with the obligations assumed under the terms of existing contracts will not come within the limitations of the present prohibition,

3. Timely information will be given to other Powers about the various measures adopted by the Turkish Government for the enforcement of this decree.

<sup>1</sup> Supplied by the Government of Turkey.

## UNION OF SOCIALIST SOVIET REPUBLICS

ORDER NO. 491 OF THE PEOPLE'S COMMISSAR FOR FOREIGN TRADE PROHIBITING THE EXPORTATION OF WAR MATERIALS TO SPAIN, AUGUST 28, 1936<sup>1</sup>

I prohibit as from the 28th August, 1936, the export, re-export and transit to Spain, Spanish Possessions and to the Spanish Zone in Morocco of all kinds of weapons, ammunition and war materials, of all kinds of aeroplanes assembled and unassembled as well as of all kinds of warships.

<sup>1</sup> English text supplied by the British Foreign Office through the courtesy of the Department of State, Washington.

## YUGOSLAVIA

I. LAW CONCERNING THE MANUFACTURE, IMPORTATION AND EXPORTATION OF EXPLOSIVES AND THE TRAFFIC IN ARMS AND AMMUNITION, SEPTEMBER 21, 1929<sup>1</sup>*(Translation)*

SECTION 1. The manufacture, importation and exportation of explosives and the traffic in arms and ammunition is the exclusive right of the State.

SEC. 6. Explosives and non-military arms and ammunition may be exported from the State only upon the approval of the Minister for the Army and Navy.

SEC. 11. The Minister for the Army and Navy may alone decide what constitutes explosives as well as which non-military ammunition shall be regarded as being of military character.

II. REGULATIONS CONCERNING THE MANUFACTURE, IMPORTATION, EXPORTATION, SALE OF AND TRAFFIC IN GUN-POWDER, EXPLOSIVES AND OTHER ARMS AND AMMUNITION, MARCH 20, 1930<sup>2</sup>*(Translation)*

## EXPORTS

SEC. 22. The Ministry of Army and Navy, upon receipt of an application, may grant or refuse a permit for the exportation of gun-powder and other explosives or may refuse to issue an export permit.

In the application for an export permit, the exporter must give: the correct address of the purchaser, the city and country of destination, the kind and quantity of material and the manner of packing for export customs.

The application must be accompanied by an uncanceled revenue stamp for export applications.

The Ministry of Army and Navy, when necessary, shall indicate on the export permit that the material be examined by the military expert.

Expenses in this connection are to be defrayed by the exporter.

## TRANSPORTATION

SEC. 24. Permits for transportation are issued by the Ministry for the Army and Navy.

Transportation is permitted upon an application which must show the

<sup>1</sup> Law A.T. No. 13800 of Sept. 21, 1929, published in *Official Gazette* of Sept. 30, 1929, issue No. 228-XCII. Supplied by the Yugoslavian Government.

<sup>2</sup> *Official Gazette*, No. 64, March 20, 1930. Supplied by the Yugoslavian Government. Note—It is stated that administrative measures were taken to give effect to the international understanding contained in the note of Aug. 23, 1936, and that it was not considered necessary to issue a special decree, as there is no private manufacture of arms in Yugoslavia. *Hemming Report*, p. 16.

addresses of the shipper and recipient, the country of origin and destination, the kind, quantity and packing of the material as well as the port of leave and entry.

The said application and permits are not subject to a tax when the material is sent from contractual countries.

In such cases the appropriate authorities may select a military expert to examine the material and to determine what should be indicated in the permit.

SEC. 25. Customs examinations and shipping for export and transport may not be made if not authorized by the Ministry of Army and Navy for export.

### III. PERMIT FOR THE TRANSPORTATION, IMPORTATION AND EXPORTATION OF CHEMICALS; DECREE BY THE MINISTER FOR THE ARMY AND NAVY AUGUST 9, 1934 <sup>3</sup>

#### (Translation)

In connection with the report of the Commission of the Ministry appointed by my order A. Br. No. 4069 of July 5, 1932, and in reference to Section 6 of the Law concerning the manufacture, importation, exportation and the sale of gun-powder, explosives, arms and ammunition and in reference to Sections 21, 23, and 24 of the Regulations for the execution of that Law, I hereby

#### DECREE:

1. A permit from the Ministry for the Army and Navy (Artillery-Technical Section) is necessary for the transportation, importation and exportation of the chemicals indicated in the annexed list through our country.

2. Persons engaged in the transportation, importation and exportation of the chemicals named below, must previously file an application with the Ministry for the Army and Navy (Artillery-Technical Section) which must contain:

"The kind of chemicals, the origin and the name of the shipper, the destination and the name of the addressee, the potency of the chemicals, the quantity (in kilograms or liters), the method of transportation (by water, railroad or overland)."

3. The approved permit must accompany the bill of lading and be shown to customs upon request.

The annexed list of chemicals in the French and German languages shall be published in the *Official Military Journal* and the *Official Gazette*.

The above Decree shall enter into force from the date of publication in the *Official Gazette* and the *Official Military Journal*.

<sup>3</sup> A. B. No. 12336, Aug. 9, 1934, Belgrade. Supplied by the Yugoslavian Government.

## LIST OF CHEMICALS

for which traffic is regulated, i.e., their transportation, exportation and importation is subject to the approval of the Ministry of the Army and Navy:

Chlore liquide;  
 Oxichlorure de carbon Phosgène;  
 Les chloroformiates de méthyle chlorés; Palite  
 et surpalite;  
 Acide Cyanhydrique;  
 Chlorure de cyanogène, Mauginite;  
 Sulfure d'éthyle dichlore, Ypérite, gaz moutard;  
 Chloropicrine, aquinite;  
 Ethylarsine dichloré;  
 Dyphénylarsine chloré;  
 Dyphénnilarsine cyane;  
 Chlorovinylarsine dichloré, Lewisit;  
 Chlorovinylarsine chloré, Lewisit;  
 Trichlorotrivinyarsine, Lewisit;  
 Diphennylamino-arsine chloré, Adamsit.

## B

## SWITZERLAND

I. ORDER OF THE FEDERAL COUNCIL CONCERNING THE EXPORTATION, REEXPORTATION AND TRANSIT OF ARMS, MUNITIONS AND MATERIAL OF WAR TO A DESTINATION IN SPAIN, SPANISH POSSESSIONS AND THE SPANISH ZONE OF MOROCCO, AUGUST 14, 1936<sup>1</sup>

(Translation)

The Swiss Federal Council, in consideration of Article 102, Nos. 8 and 9, of the Constitution, Decrees that:

ARTICLE 1. The exportation, reexportation and transit, to a destination in Spain, the Spanish Possessions and the Spanish Zone of Morocco, of all categories of arms, munitions and materials of war, including detached pieces, of all aircraft, assembled or dismantled, are forbidden.

ART. 2. Exportation to any country whatever, of all categories of arms, munitions and materials of war for the purpose of reexportation to Spain, its Possessions or the Spanish Zone of Morocco, is likewise forbidden.

ART. 3. Articles 74 *et seq.* of the federal law on customs of October 1, 1925, are applicable to infractions of the present order.

ART. 4. The present decree enters into force August 14, 1936.

The Department of Finance and Customs is charged with its execution.

<sup>1</sup> *Recueil officiel des lois et ordonnances de la Confédération Suisse*, tome LII (1936), p. 661.

II. FEDERAL CONSTITUTION, NEW TEXT, ADOPTED FEBRUARY 20, 1938<sup>2</sup>

ART. 41. The manufacture and sale of gunpowder are the exclusive prerogative of the Confederation.

The manufacture, acquisition and distribution of and trade in arms, ammunition, explosives and other war material, or component parts thereof, shall be subject to authorisation by the Confederation. Such authorisation shall be accorded only to persons and undertakings offering the guarantees required in the national interest. The rights of the establishments belonging to the Confederation itself are reserved.

Arms, ammunition and war material within the meaning of the present provisions may not be imported or exported without the authorisation of the Confederation. The Confederation shall further be entitled to make their conveyance in transit subject to its authorisation.

The Federal Council shall issue by decree, without prejudice to Federal legislation, the regulations required for the execution of the second and third paragraphs. In particular, it shall make detailed regulations concerning the grant, duration and withdrawal of authorisations, and the supervision of concession-holders. It shall further determine to what arms, ammunition, explosives, other material and component parts the present provisions apply.

III. REGULATIONS CONCERNING THE MANUFACTURE AND ACQUISITION OF, THE TRADE IN, AND THE DISTRIBUTION, IMPORT AND EXPORT OF WAR MATERIAL, JULY 8, 1938<sup>3</sup>

The Swiss Federal Council,

Considering Article 41 of the Constitution,  
HEREBY DECREES:

## I. GENERAL PROVISIONS

ARTICLE 1. The manufacture and acquisition of the trade in, and the distribution, import and export of arms, ammunition, explosives and other war material, or component parts thereof, shall be subject to the supervision of the Confederation in conformity with the provisions which follow:

The issue of regulations concerning the conveyance in transit of war material and component parts thereof is reserved.

ART. 2. The following shall be deemed to be arms, ammunition, explosives and other war material, or component parts thereof, within the meaning of the present Regulations:

*Category I*1. *Revolvers and automatic pistols of over 500 grammes.*

(a) Finished arms;

(b) Barrels and bolts, partly or fully machined or completed.

<sup>2</sup> League of Nations, "National Control," *op. cit.*, pp. 185-187.

<sup>3</sup> League of Nations, *Document Conf. D.* 183(a). 1938, pp. 9-13.

2. *Rifles and muskets*, excluding sporting guns and other sporting weapons.
  - (a) Finished arms;
  - (b) Barrels and bolts, partly or fully machined or completed.
3. *Automatic and semi-automatic fire-arms of all kinds not exceeding 11 mm. in calibre* (machine-guns, automatic rifles, machine-pistols, etc.).
  - (a) Finished arms;
  - (b) Barrels, bolts and cartridge-feed devices, partly or fully machined or completed;
  - (c) Mountings for the arms mentioned under figure 3, partly or fully machined or completed.
4. *Fire-arms of all kinds exceeding 11 mm. in calibre* (guns, howitzers, mortars, etc.).
  - (a) Finished arms;
  - (b) Barrels or tubes, mobile breeches, recoil mechanisms and recuperators, partly or fully machined or completed;
  - (c) Mountings for the arms mentioned, figure 4, partly or fully machined or completed.
5. *Laying and sighting gear, partly or fully machined or completed.*
  - (a) Laying gear for arms of all kinds;
  - (b) Sighting and fire control gear.
6. *Optical instruments for military purposes, partly or fully machined or completed.*
  - (a) Sighting instruments for arms and other apparatus;
  - (b) Range-finders;
  - (c) Observation instruments.
7. *Ammunition, explosives and ignition appliances.*
  - (a) Ammunition, partly or fully machined or completed, and component parts, for the arms mentioned under figures 1, 2 and 3;
  - (b) Ammunition for the arms mentioned under 4.
    - (aa) Finished ammunition;
    - (bb) Unfilled ammunition and projectiles, partly or fully machined or completed;
    - (cc) Fuses of all kinds, partly or fully machined or completed;
    - (dd) Clockwork movements for fuses of all kinds, partly or fully machined or completed;
    - (ee) Propellant charges;
    - (ff) Cartridges (cases), with or without percussion caps;
  - (c) Grenades, bombs, mines and exploding charges together with suitable ignition appliances of all kinds where not already mentioned under 7(a) and 7(b), partly or fully machine or completed;
  - (d) Ignition appliances of all kinds;
  - (e) Explosives of all kinds.
8. *Bayonets, partly or fully machined or completed.*
9. *Armoured vehicles of all kinds, with or without armament, armour plating for such vehicles, partly or fully machined or completed.*

*Category II*

1. *Aircraft material both heavier and lighter than air*, excluding light civil aviation material (gliders, material for light aeroplanes with low-powered engines, spherical pleasure balloons).
  - (a) Finished material, assembled or dismantled;
  - (b) Component parts of aircraft, partly or fully machined or completed, namely:
    - aircraft fuselages,
    - aircraft wings,
    - tail units,
    - under-carriage units,
    - airscrews.
2. *Aircraft engines*, excluding those intended for light civil aviation.
  - (a) Aircraft engines, partly or fully machined or completed;
  - (b) Cylinders for aircraft engines, partly or fully machined or completed;
  - (c) Crank-shafts of aircraft engines, partly or fully machined or completed;
  - (d) Ignition magnetos for aircraft engines.
3. *Appliances for the arming of aircraft*.
  - (a) Devices for guns and machine-guns, partly or fully machined or completed;
  - (b) Bomb racks and release gear for bombs and other means of combat, partly or fully machined or completed.

*Category III**Chemical Products Intended Only for Military Purposes*

The Federal Council may, if circumstances so require, remove articles from the above-mentioned categories or insert new articles.

"War material" within the meaning of the following articles shall be taken to mean the articles which are mentioned above or which may be specified in supplementary decrees.

ART. 3. Any person who manufactures, acquires, trades in, distributes, imports or exports war material shall be subject to the provisions of the present Regulations. Establishments belonging to the Confederation itself shall form an exception to this rule.

ART. 4. Disputes concerning definitions or scope shall be decided by the Federal Military Department.

ART. 5. The regulations concerning the powder monopoly shall not be affected by the present Regulations.

## II. MANUFACTURE, ACQUISITION AND DISTRIBUTION OF AND TRADE IN WAR MATERIAL

ART. 6. An authorisation from the Federal Military Department must be obtained by the following:



- (a) Any person desirous of manufacturing war material;
- (b) Any person acquiring war material for purposes of sale, trade, distribution or storage;
- (c) Any person who acts as intermediary for the acquisition or distribution of or trade in war material;

No authorisation is required for orders for war material from the Federal Military Administration.

ART. 7. The Federal Military Department shall issue executive regulations concerning the form and tenor of applications for authorisation and the procedure to be followed.

ART. 8. The Federal Military Department shall decide concerning applications for authorisation.

It may, before taking any decision, obtain the opinion of the Government of the Canton concerned and may make the authorisation subject to such conditions as it considers to be in the interests of national defense or public welfare.

When application for authorisation is made by a foreign undertaking, or an undertaking which has its headquarters abroad, evidence of reciprocity of treatment may be required.

Authorisation shall be refused more particularly when:

- (a) The application has not been submitted in the prescribed form;
- (b) There is no definite assurance that the undertaking is well managed;
- (c) Authorisation would be contrary to the interests of national defence or public welfare;
- (d) Authorisation would be incompatible with international conventions.

ART. 9. The authorisation shall be non-transferable and shall be valid only for the war material mentioned in it; its duration shall be in principle unlimited.

ART. 10. The Federal Military Department may at any time, for proper reasons, withdraw authorisations which have been granted, more particularly when:

- (a) The authorisation has been obtained on the strength of incorrect information or of other illicit acts;
- (b) The undertaking has failed to comply with the present Regulations or the relevant executive regulations or again the condition governing the authorisation, the more so when the offence is repeated in spite of warnings received;
- (c) The undertaking is operated in a manner contrary to the interests of the country;
- (d) The withdrawal of the authorisation is necessary in view of international conventions.

ART. 11. The authorisation shall not replace authorisations prescribed by other Federal or Cantonal laws.

ART. 12. Undertakings which have received an authorisation shall immediately inform the office named by the Federal Military Department of all orders for war material. A declaration shall also be made for war material

manufactured without any order and for the subsequent sale and distribution of such material, but not for orders from the Federal Military Administration.

This declaration shall not exempt the party concerned from the obligation to obtain the import or export permit mentioned in Article 13.

The procedure in regard to declaration shall be further defined by the Federal Military Department.

### III. IMPORT AND EXPORT OF WAR MATERIAL

ART. 13. A permit from the office named by the Federal Military Department shall be required for the import or export of war material. The permit is non-transferable.

An export permit will not be granted as a general rule unless the applicant proves that the consignment is for delivery to a foreign Government or to an office authorised by the latter to accept it.

The applicant is required, so far as lies within his power, to see that the war material actually reaches the country of destination mentioned in the export application.

The permit shall be refused more particularly when it would be incompatible with the interests of the country or with international conventions.

The Federal Military Department shall issue regulations concerning the form and tenor of applications and the procedure to be followed.

The provisions of the Customs law and any other regulations concerning import and export shall remain unaffected.

### IV. SUPERVISION

ART. 14. The Federal Military Department shall arrange for its Services to supervise undertakings subject to the present Regulations.

It will be their duty more particularly to see whether the undertaking is being operated in conformity with the present Regulations and the executive regulations and in accordance with the conditions attaching to the grant of the permit.

Inspectors shall be empowered to enter the undertakings and to inspect them. They shall have the right, in the performance of their duties, to inspect the books, accounts and correspondence concerning the transactions which they are supervising. The directors or managers of the undertakings shall be bound to supply them with any information that may be necessary for the purposes of proper supervision.

Any incriminating documents shall be seized.

Inspectors shall be bound to observe secrecy.

The Federal Military Department shall issue further provisions concerning the exercise of supervision, in particular, the keeping of special books.

### V. APPEALS

ART. 15. In conformity with Articles 22 *et seq.* of the law of June 11, 1928, concerning administrative and disciplinary jurisdiction, decisions

taken by the Federal Military Department in pursuance of the present Regulations may be referred by administrative appeal to the Federal Council, whose decision shall be final.

## VI. PENAL PROVISIONS

ART. 16. Any person who, deliberately and without authorisation, and in defiance of the present Regulations and of executive regulations, shall:

- (a) Manufacture war material;
- (b) Acquire war material for purposes of sale, trade, distribution or storage;
- (c) Act as an intermediary for the acquisition or distribution of or trade in war material,

shall be liable to a fine not exceeding fifty thousand francs.

If there are aggravating circumstances, the maximum fine shall be doubled. The fine may be combined with a sentence of imprisonment for a term not exceeding one year.

ART. 17. Any person who deliberately:

- (a) Makes incorrect declarations in the applications contemplated in the present Regulations or the executive regulations;
- (b) Contravenes the provisions of Article 12;
- (c) Imports or exports war material without authorization;
- (d) Fails to observe the conditions attaching to the authorisation or grant of permit (Articles 8 and 13);
- (e) Refuses to give the inspectors admittance to the undertaking, or refuses the information to which they are entitled, or prevents them in any other way from exercising supervision or carrying out their duties properly;
- (f) Fails to keep the books prescribed in Article 14, or keeps them incorrectly, shall be liable to a fine not exceeding ten thousand francs.

If there are aggravating circumstances, the maximum fine shall be doubled. The fine may be imposed in combination with a sentence of imprisonment for a term not exceeding six months.

ART. 18. Any inspector guilty of violating secrecy as prescribed under Article 14 shall be liable to a fine not exceeding ten thousand francs, or to imprisonment for a term not exceeding one year, or to imprisonment and a fine; this penalty may be combined with dismissal.

ART. 19. Except as otherwise provided in the present Regulations, the general provisions of the Federal Penal Code of February 4, 1853, shall be applicable.

In case of negligence, the penalty shall be a fine up to the amount of one-half of the maximum laid down.

ART. 20. When the fact of an offence has been established, the judge may, regardless of the guilt of any particular person, order the confiscation of war material.

Confiscated material shall become the property of the Confederation.

ART. 21. If the offence was committed in the administration of a corporation or company, the penalty shall be inflicted on the persons who have or should have acted on its behalf, but the corporation or company shall be jointly liable for fines and costs.

ART. 22. The offences mentioned in the present Regulations are amenable to the jurisdiction of the Federal Criminal Court.

The Federal Department of Justice and Police may delegate its powers in the matter of judicial enquiry and judgment to the Cantonal authorities.

#### VII. ADMINISTRATIVE MEASURES

ART. 23. The Federal Military Department may order the closing of undertakings which contrary to the present Regulations, are being operated without authorisation.

The execution of this measure is a Cantonal responsibility.

#### VIII. FEES

ART. 24. The following fees shall be charged for the authorisations and permits mentioned in the present Regulations:

(a) Authorisations mentioned in Article 6 . . . from 20 to 500 francs;

(b) Permits mentioned in Article 13 . . . from 2 to 20 francs.

The fee shall be fixed in each instance, within the foregoing limits, according to the size of the undertaking or the amount of the war material imported or exported.

#### IX. TEMPORARY AND EXECUTIVE PROVISIONS

ART. 25. The present Regulations and the executive regulations shall also be applicable to existing undertakings.

ART. 26. The present Regulations shall come into force on September 1, 1938.

The Federal Military Department shall be responsible for their execution. It shall issue the necessary executive regulations.

#### APPENDIX IV

COMMUNIQUE RECITING THE AGREEMENT TO PROHIBIT  
THE DEPARTURE OF VOLUNTEERS FOR SPAIN,  
ADOPTED BY THE INTERNATIONAL NON-  
INTERVENTION COMMITTEE,  
FEBRUARY 16, 1937<sup>1</sup>

DECIDED:

Firstly, as from midnight, February 20-21, to extend the non-intervention agreement to cover recruitment in and transit through or departure from their respective countries of persons of non-Spanish nationality proposing to proceed to Spain or Spanish dependencies for the purpose of taking service in the present war;

Secondly, to furnish the international committee as soon as possible with particulars regarding the measures taken by their respective governments to give effect to the extension of the non-intervention agreement indicated above;

Thirdly, as from the date mentioned in the above to adopt the system of supervision prepared by their technical advisory sub-committee, subject to final adjustment of outstanding questions connected therewith;

Fourthly, to bring into operation the scheme of supervision referred to as from midnight, March 6-7.

<sup>1</sup> *New York Times*, Feb. 17, 1937.



## APPENDIX V

### THE LEGISLATIVE AND OTHER MEASURES APPLIED BY THE PARTICIPATING GOVERNMENTS TO GIVE EFFECT TO THE AGREEMENT OF FEBRUARY 16, 1937

#### I

#### ALBANIA

##### I. CIVIL CODE OF APRIL 1, 1929<sup>1</sup>

ARTICLE 12. A person loses his Albanian nationality and has no right without permission from the government to enter the jurisdiction of the kingdom, if he has accepted an official position in a foreign state without permission from the Albanian Government, or if he has willingly entered the military service of a foreign land and does not withdraw from such service although given notice by the Albanian Government that he should do so within a specified time.

ART. 13. Upon the basis of a favorable opinion by the Council of State and by a decision of the Cabinet nationality lost under Articles 10 and 12 and also nationality lost with the assent of the government may be restored to the person who lost it: (1) if he serves in the Albanian army or accepts an official position; (2) if he declares that he renounces the foreign nationality or proves that he has resigned the official position or withdrawn from his service in the foreign army, entered into in spite of notification by the Albanian Government, and in both cases has decided to resume permanent residence in Albania within a year; (3) after a residence of two years in Albanian territory in the event that nationality has been lost because he acquired a foreign nationality.

##### II. LETTER OF THE ALBANIAN MINISTRY OF FOREIGN AFFAIRS, POLITICAL DIVISION, TO THE LEGATION OF THE UNITED STATES AT TIRANA, JUNE 25, 1938<sup>2</sup>

In reply to note No. 23 . . . (See Appendix III: Albania)

2. The case of volunteers for Spain has been regulated on the basis of the decision of the Council of Ministers No. 220 of February 20, 1937, which prohibits:

<sup>1</sup> R. W. Flournoy and M. O. Hudson, *A Collection of Nationality Laws* (New York, 1929), pp. 6-7.

<sup>2</sup> Communicated to the author by the American Minister.

- (a) the recruiting of Albanian nationals in Albania in favor of the different Spanish armies;
- (b) the recruiting of Albanian or foreign nationals who eventually might go to Spain;
- (c) the transit through Albanian territory of persons going to Spain as volunteers, and
- (d) a strict control of visas issued for Spain.

## 2

## AUSTRIA

I. NOTE <sup>1</sup>

The Austrian penal code makes provision for the infliction of severe penalties on persons recruiting for foreign military service without authorisation. The text of the relevant paragraphs of the code (paras. 92, 213 and 215) is attached.

Austrian subjects are also forbidden by law to serve in a foreign army. Austrians liable to be called up for compulsory service at home have to obtain special permission in order to leave the country. (Para. 6(2) and Para. 11(1) of the first order of the Austrian Federal Service Law B.G.B. No. 176/1936.)

## II. PROVISIONS OF THE AUSTRIAN PENAL CODE IN REGARD TO UNAUTHORISED RECRUITMENT

§ 92. Any person who, without the permission of the Government, recruits an Austrian subject for foreign military service or arranges for an Austrian subject to enter foreign military service, will be punishable for the misdemeanour of unauthorised recruitment with one to five years' imprisonment, or five to ten years' imprisonment if the action is committed during war-time.

§ 212. *First Case.* If a person deliberately fails to prevent the crime being committed, he being easily able to prevent it and without exposing himself, his relations (§ 216) or persons legally under his protection to any danger.

## PUNISHMENT:

§ 213. In cases of high treason, espionage, unauthorised recruitment and treatment of a human being as slave, such omission is to be regarded as complicity and to be dealt with in the fashion prescribed by §§ 60, 67, 92 and 95. In the case of other crimes, the guilty person is to be punished with imprisonment of six months to one year; if the crime is one entailing the death penalty or life-long imprisonment—one to five years' imprisonment.

## CONCEALMENT:

§ 214. *Second Case.* If a person conceals from the investigating authorities information which might lead to the discovery of the crime or the perpe-

<sup>1</sup> Supplied by the British Foreign Office through the courtesy of the Department of State, Washington.



trator, i.e., deliberately tries to prevent facts from becoming known or make it more difficult for them to become known; or hides the criminal from the authorities; or gives shelter to persons known to him to be criminals; or helps to arrange meetings between them which he could have prevented.

PUNISHMENT:

§ 215. Such a person, in so far as he is not charged with concealment of facts and resultant complicity (§§ 61, 67 and 92) in cases of high treason, espionage and recruitment under false pretences, is punishable with imprisonment of six months to one year, according to the severity of the crime committed and the harm resulting from such person's connivance in the crime; if shelter was provided or meetings arranged, hard labour up to five years.

III. FEDERAL LAW NO. 285, CONCERNING ACQUISITION AND LOSS OF CITIZENSHIP, JULY 30, 1925<sup>2</sup>

PARAGRAPH 10. The following persons lose provincial citizenship through relinquishing citizenship [*Ausbürgerung*] except in the case of a special legislation to the contrary: . . . (2) A person who voluntarily enters the public or military service of a foreign state.

IV. FEDERAL LAW CONCERNING PASSPORT REGULATIONS FOR TRAVEL TO SPAIN, JULY 10, 1937<sup>3</sup>

According to Article III, Paragraph 2 of the Federal Constitution Law concerning extraordinary measures within the Constitution (BGBl. I No. 225/1934), the Federal Government have decreed the following:

§ 1. (1) Citizens of the Austrian Federation who have their residence or are living permanently in the inland, and who wish to travel to Spain or to the Spanish Dependencies including the zone of the Spanish Protectorate in Morocco, must have for this purpose a passport which, after the coming into force of this law, has been designated valid for the above mentioned districts by the competent passport office.

(2) The designation of the passport according to the preceding paragraph is left to the judgment of the competent passport office.

§ 2. (1) Who leaves the country in opposition to § 1 intending to go to Spain or to the Spanish Dependencies including the zone of the Spanish Protectorate in Morocco, commits a criminal offence and will be condemned by the administering authorities of the district—or in the domain of a federal police office by the letter—to a penalty up to 2000 S or to arrest up to 3 months in case that the money is not obtainable.

(2) The attempt is a criminal offence.

<sup>2</sup> Flournoy and Hudson, *op. cit.*, pp. 19–20.

<sup>3</sup> *Bundesgesetzblatt für den Bundesstaat Oesterreich* No. 59/1937. English translation supplied by the British Foreign Office through the courtesy of the Department of State, Washington.

§ 3. The Federal Minister who is competent for all concerns of safety is entitled to annul this Federal Law entirely or parts of it by means of a decree.

§ 4. The Minister who is competent for the concerns of safety is entrusted with the execution of this Federal Law.

The passing of this Federal Law according to the Federal Constitution is authenticated.

MIKLAS; SCHUSCHNIGG.

### 3

## BELGIUM

### I. LAW SUPPLEMENTING THE LAWS ON THE MILITIA, THE RECRUITMENT AND THE OBLIGATIONS OF SERVICE, DECEMBER 31, 1936<sup>1</sup>

(Translation)

Leopold III, . . .

The Chambers have adopted and We sanction the following:

ARTICLE 1. There shall be inserted in the laws on the militia, the recruitment and the obligations of service an Article 79 *bis*, as follows:

"Without prejudice to the application of more severe penal laws there shall be a punishment of an imprisonment of from eight days to six months for anyone who by gifts, remuneration, promises, threats, abuse of authority or of power, recruits men, provokes or receives engagements of men for the profit of a foreign army or troops.

"Derogations from the prohibition set forth in the preceding paragraph may be authorized by the Minister of National Defense."

ART. 2. The present law shall enter into force the day of its publication in the *Monitor*.

### II. LAW ENSURING THE NON-INTERVENTION OF BELGIUM IN THE CIVIL WAR IN SPAIN, JUNE 11, 1937<sup>2</sup>

(Translation)

Leopold III, . . . The Chambers have adopted and We sanction the following:

ARTICLE 1. The following are forbidden in Belgium:

(a) Recruitment and all acts of a nature to provoke or to facilitate the recruitment of persons other than those of Spanish nationality, for the benefit of an army or a troop in Spain or in the Spanish possessions, including the Spanish Zone of Morocco;

(b) Departure and transit of persons other than those of Spanish nationality, for service in an army or a troop specified in the preceding paragraph.

<sup>1</sup> *Moniteur Belge*, No. 1, Jan. 1, 1937, p. 2.

<sup>2</sup> *Pasnomie: Collection complète des Lois, Arrêtes, etc.*, 6me Série, Tome IV, 1937, p. 144; *Moniteur Belge*, No. 164, June 13, 1937, p. 3475.

ART. 2. The King is authorized to take, by decree deliberated in the Council of Ministers, all provisions necessary for the execution of international accords to ensure the non-intervention of contracting countries and of persons residing there, in the civil war in Spain.

ART. 3. Infractions of Article 1 and of decrees taken by virtue of Article 2 are punishable by imprisonment of from 8 days to 6 months.

The entire first book of the Penal Code, including Chapter VII and Article 85, is applicable to these infractions.

ART. 4. Infractions envisaged in Article 3 of the present law are deferred to the correctional tribunal, under reservation of the application of the Law of June 15, 1899.

ART. 5. The present Law shall enter into force the day of its publication in the *Belgian Monitor*.

## 4

## UNITED KINGDOM

I. WARNING ISSUED BY THE FOREIGN OFFICE OF ENFORCEMENT OF THE FOREIGN ENLISTMENT ACT OF 1870, JANUARY 10, 1937<sup>1</sup>

Information has recently reached H. M. Government which indicates that attempts are being made in this country to recruit persons for service with the forces of one or other of the contending parties in Spain.

His Majesty's Government in the United Kingdom desire to call attention to the fact that the provisions of the Foreign Enlistment Act, 1870, and in particular sections 4 and 5, are applicable in the case of the present conflict in Spain. It is accordingly an offence for any British subject to accept or agree to accept any commission or engagement in the military, naval, or air service of either party to the present conflict, or for any person within the United Kingdom to induce any other person to accept or agree to accept any such commission or engagement. It is also an offence for any British subject to leave or attempt to leave the United Kingdom with the intention of accepting any such commission or engagement, and for any person in the United Kingdom to induce any other person to do so.

Any person contravening these provisions is liable on conviction to imprisonment up to two years or to a fine, or to both fine and imprisonment.

II. TEXT OF FOREIGN ENLISTMENT ACT, 1870<sup>2</sup>

Whereas it is expedient to make provision for the regulation of the conduct of Her Majesty's subjects during the existence of hostilities between foreign States with which Her Majesty is at peace:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in

<sup>1</sup> London *Times*, Jan. 11, 1937.

<sup>2</sup> 33 & 34 Vict. c. 90.

this present Parliament assembled, and by the authority of the same, as follows:

*Preliminary*

1. This Act may be cited for all purposes as 'The Foreign Enlistment Act, 1870.'
2. This Act shall extend to all the dominions of Her Majesty, including the adjacent territorial waters.
3. This Act shall come into operation in the United Kingdom immediately on the passing thereof, and shall be proclaimed in every British possession by the governor thereof as soon as may be after he receives notice of this Act, and shall come into operation in that British possession on the day of such proclamation, and the time at which this Act comes into operation in any place is, as respects such place, in this Act referred to as the commencement of this Act.

*Illegal Enlistment*

4. If any person, without the licence of Her Majesty, being a British subject, within or without Her Majesty's dominions, accepts or agrees to accept any commission or engagement in the military or naval service of any foreign State at war with any foreign State at peace with Her Majesty, and in this Act referred to as a friendly State, or whether a British subject or not within Her Majesty's dominions, induces any other person to accept or agree to accept any commission or engagement in the military or naval service of any such foreign State as aforesaid,—

He shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

5. If any person, without the licence of Her Majesty, being a British subject, quits or goes on board any ship with a view of quitting Her Majesty's dominions, with intent to accept any commission or engagement in the military or naval service of any foreign State at war with a friendly State, or, whether a British subject or not, within Her Majesty's dominions, induces any other person to quit or to go on board any ship with a view of quitting Her Majesty's dominions with the like intent,—

He shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

6. If any person induces any other person to quit Her Majesty's dominions or to embark on any ship within Her Majesty's dominions under a misrepresentation or false representation of the service in which such person is to be engaged, with the intent or in order that such person may accept or agree

to accept any commission or engagement in the military or naval service of any foreign State at war with a friendly State,—

He shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

7. If the master or owner of any ship, without the licence of Her Majesty, knowingly either takes on board, or engages to take on board, or has on board such ship within Her Majesty's dominions any of the following persons, in this Act referred to as illegally enlisted persons; that is to say,—

- (1) Any person who, being a British subject within or without the dominions of Her Majesty, has, without the licence of Her Majesty, accepted or agreed to accept any commission or engagement in the military or naval service of any foreign State at war with any friendly State:
- (2) Any person, being a British subject, who, without the licence of Her Majesty, is about to quit Her Majesty's dominions with the intent to accept any commission or engagement in the military or naval service of any foreign State at war with a friendly State:
- (3) Any person who has been induced to embark under a misrepresentation or false representation of the service in which such person is to be engaged, with the intent or in order that such person may accept or agree to accept any commission or engagement in the military or naval service of any foreign State at war with a friendly State:

Such master or owner shall be guilty of an offence against this Act, and the following consequences shall ensue; that is to say,—

- (1) The offender shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour: and
- (2) Such ship shall be detained until the trial and conviction or acquittal of the master or owner, and until all penalties inflicted on the master or owner have been paid, or the master or owner has given security for the payment of such penalties to the satisfaction of two justices of the peace, or other magistrate or magistrates having the authority of two justices of the peace: and
- (3) All illegally enlisted persons shall immediately on the discovery of the offence be taken on shore, and shall not be allowed to return to the ship.

#### *Interpretation Clause*

30. In this Act, if not inconsistent with the context, the following terms have the meanings hereinafter respectively assigned to them; that is to say,—

‘Foreign State’ includes any foreign prince, colony, province, or part of any province or people, or any person or persons exercising or assuming to

exercise the powers of government in or over any foreign country, colony, province, or part of any province or people:

'Military service' shall include military telegraphy and any other employment whatever, in or in connection with any military operation:

'Naval service' shall, as respects a person, include service as a marine, employment as a pilot in piloting or directing the course of a ship of war or other ship when such ship of war or other ship is being used in any military or naval operation, and any employment whatever on board a ship of war, transport, store ship, privateer or ship under letters of marque; and as respects a ship, include any user of a ship as a transport, store ship, privateer or ship under letters of marque:

'United Kingdom' includes the Isle of Man, the Channel Islands, and other adjacent islands:

'British possession' means any territory, colony, or place being part of Her Majesty's dominions, and not part of the United Kingdom, as defined by this Act:

'The Secretary of State' shall mean any one of Her Majesty's Principal Secretaries of State:

'The Governor' shall as respects India mean the Governor-General or the governor of any presidency, and where a British possession consists of several constituent colonies, mean the Governor-General of the whole possession or the Governor of any of the constituent colonies, and as respects any other British possession it shall mean the officer for the time being administering the government of such possession; also any person acting for or in the capacity of a governor shall be included under the term 'Governor.'

### III. STATEMENT OF SECRETARY EDEN IN THE HOUSE OF COMMONS, MARCH 10, 1937<sup>3</sup>

With a view to giving practical effect to the obligations of His Majesty's Government under the recent extension of the Non-Intervention Agreement to cover the dispatch of volunteers to Spain, British passports will cease to be regarded until further notice as valid for Spain or the Spanish Zone of Morocco unless they have been specifically endorsed for travel to either of these destinations, on a date subsequent to Saturday, February 20, 1937. These special endorsements are being granted on a temporary basis and are issued only to persons who are able to satisfy the passport authorities or H. M. Consular officers abroad that they are travelling for urgent business reasons or for other special or approved purposes. I am informed that the passports of British subjects proceeding to Spain via French territory require in addition to be counter-endorsed by a French prefect.

### IV. DECLARATION TO BE SIGNED BY APPLICANTS FOR SPECIAL VISA TO SPAIN<sup>4</sup>

<sup>3</sup> London *Times*, March 11, 1937.

<sup>4</sup> London *Times*, April 7, 1937.

In connection with my application for a special endorsement for Spain, I am proceeding to....., for the purpose of..... I undertake that nothing will take place in the course of my visit that will be construed as implying any intervention by me on behalf of either side in the present dispute in Spain. I understand that I travel at my own risk and that H. M. Government cannot take any responsibility for my protection or for my evacuation in case of need.

## 5

## BULGARIA

I. LAW OF DECEMBER 31, 1903, CONCERNING NATIONALITY, AS AMENDED TO DATE <sup>1</sup>

ARTICLE 17. Bulgarian Nationality shall be lost by: . . .

(3) A Bulgarian national who, after having accepted an office from a foreign government, neglects the order from the Bulgarian Government to give up such position within a prescribed period, and

(4) A Bulgarian national who enters the military service of a foreign country without the consent of the Government, aside from the penalties which he might bring upon himself in trying to avoid the performance of his duty which the military law requires.

ART. 18. A Bulgarian national who has lost his nationality may again acquire such by a royal decree provided only that he reside in Bulgaria. . . .

ART. 19. A Bulgarian national who without the permission of the government enlists in the army of a foreign country, may not return to Bulgaria, except by authorization of a royal decree, nor can he again become a Bulgarian national, unless he fulfills the conditions required of an alien for acquiring, through regular naturalization, Bulgarian nationality.

II. DECREE LAW PROHIBITING BULGARIAN CITIZENS FROM TAKING PART IN THE SPANISH CIVIL WAR, APRIL 23, 1937 <sup>2</sup>

ARTICLE I. Citizens of Bulgaria are forbidden to depart for Spain, any Spanish colony, or the Spanish Zone in Morocco for the purpose of taking part in the Civil War.

ART. II. The Minister of Interior and Public Health is charged to take the necessary steps to prevent the departure or the passage in transit to the above-mentioned regions, of persons contemplating taking part in the Civil War.

ART. III. It is forbidden to enlist Bulgarian citizens to take part in the Spanish Civil War, as well as to co-operate with those engaged in such enlistment.

<sup>1</sup> Flournoy and Hudson, *op. cit.*, pp. 162, 166.

<sup>2</sup> *Official Gazette*, No. 95 of May 4, 1937. English translation supplied by the Bulgarian Government. A copy of this same Decree furnished through the British Foreign Office states the date of enactment to be April 9, 1937.

ART. IV. Any violation of Articles I and III of the present law, as well as of the regulations issued in conformity with Article II will be punished by imprisonment.

The Minister of the Interior and Public Health is charged with the enforcement of the above decree law.

## 6

## CZECHOSLOKAVIA

I. DEFENCE OF THE STATE ACT, MAY 13, 1936 <sup>1</sup>

(*Translation*)

ARTICLE 176. Inadmissible Recruiting of Soldiers.

Whoever without the permission of the Government recruits a citizen of the Republic for military service of another Power or for service in a foreign military unit (organization) organized on a military basis, or whoever acts as an intermediary in recruiting for such a purpose, is punishable with a prison sentence of from 6 months to five years.

II. NOTE <sup>2</sup>

Notifications in the daily press and by wireless announced that service with either party engaged in the civil war in Spain was contrary to this law, subjecting any person guilty of violation to the penalties in accordance with the law.

<sup>1</sup> *Sbirka Zakonu a narizeni statu Ceskoslovenskeho*, 1936, No. 131.

<sup>2</sup> Information supplied by the British Foreign Office through the courtesy of the Department of State, Washington.

## 7

## DENMARK

I. LAW CONCERNING MEASURES TO PREVENT PARTICIPATION IN THE CIVIL WAR IN SPAIN, FEBRUARY 26, 1937 <sup>1</sup>

(*Translation*)

We, Christian the Tenth, . . .

I hereby proclaim: the Riksdag has adopted and We, with our Consent, have sanctioned the following Law:

## § I

It is forbidden to Danish, as well as to foreign citizens, to depart from or to travel through this country in order to participate in the civil war in Spain.

<sup>1</sup> Supplied by the Government of Denmark.



## § II

(1) It is prohibited to Danish citizens, or to foreigners living in this country, to depart from this country for Spain or the Spanish possessions including Spanish Morocco, unless their passports or other identification papers are marked with a special endorsement relating to permission for departure for these territories. Such permission may be given by the Minister of Justice or one authorized by him. Permission may only be given under the circumstance that it can be proved that the reason for the trip is not participation in the civil war.

(2) It is further forbidden to foreigners not living in this country to depart from here to Spain or the Spanish possessions unless they are in possession of a special permit given by the authorities of their home country to travel to these territories.

## § III

It is forbidden to travel agencies or similar businesses to sell tickets for travel to those territories mentioned in section II to persons that are not in possession of the special permit mentioned in that section.

## § IV

It is forbidden to masters of Danish ships to transport passengers to or to land passengers in the territories mentioned in section II unless these passengers are in possession of the special permit mentioned in the same section.

## § V

Violation of the provisions mentioned in this Law shall be punishable by fine or by imprisonment up to three months, under mitigating circumstances by fine alone.

## § VI

This Law shall enter into force immediately and shall terminate at the close of the civil war; the Law may be terminated at an earlier date by Royal Decree.

II. CIRCULAR TO POLICE OFFICIALS CONCERNING THE PROHIBITION  
AGAINST DEPARTURE FOR SPAIN, FEBRUARY 26, 1937<sup>2</sup>

(*Translation*)

In the Law of February 26, 1937, Concerning Measures to Prevent Participation in the Civil War in Spain it is, among other things, forbidden to Danish citizens or to foreigners living in this country to depart from this country for Spain or the Spanish possessions, including the Spanish zone of Morocco, unless their passports and other identification papers have at-

<sup>2</sup> Supplied by the Government of Denmark.

tached to them the special endorsement relating to permission for departure for these territories.

Persons intending to go to Spain or the Spanish possessions may obtain permission to depart from the Minister of Justice on condition that they show properly certified documents that the reason for the trip is not participation in the civil war.

Information relating to these documents may be submitted to the Minister of Justice by the authorities concerned after the police have made further inquiry concerning the reason for the travel. Notation concerning the permission given by the Minister of Justice shall be made on the said passports or other identification papers by the authorities concerned. If the permission is refused, notation must be made on the passport.

In accordance with permission from the Minister of Justice, dated February 26, 1937, the Chief of Police, the Director of the Copenhagen police, and the Chief of the National Police may, without notifying the Minister of Justice, attach a notation to the passports of persons who are legally signed on Danish or foreign ships calling at ports of Spain or the Spanish possessions to the effect that they are valid for travel to Spain and the Spanish possessions.

The above-mentioned gentlemen are urged not to issue in the future passports valid for travel to Spain and the Spanish possessions.

If, in accordance with the Circular of the Ministry of Justice no.99, dated June 29, 1926, the passport is issued as valid for travel abroad without mentioning particular countries, the following notation must be affixed after the word "abroad": "Not valid for travel to Spain or Spanish Possessions," which attachment must be translated into all three languages given in the passport document.

Previously issued passports, when they are presented upon entrance or departure from the country, or if they otherwise come into the hands of the police, must be provided with the said attachment.

*Ministry of Justice, STEINCKE.*

### III. CIRCULAR TO POLICE OFFICIALS CONCERNING ENTRANCE TO FRANCE FROM SPAIN, DECEMBER 7, 1937<sup>3</sup>

*(Translation)*

The Ministry of Justice has received notification from the French Legation in Copenhagen that due to much misuse of passports in travel from Spain to France, the French authorities have decided that persons who intend to go to France from Spain may not be permitted to enter France unless they are in possession of a special permission from the French consular authorities in Spain. In accordance herewith, you gentlemen are asked to inform persons receiving permission to travel to Spain that, when leaving

<sup>3</sup> *Ibid.*

Spain for France, they must previously have secured the above-mentioned permission from the proper French consular authorities in Spain.

*Ministry of Justice, [not signed].*

## 8

## ESTONIA

LAW CONCERNING THE PROHIBITION OF TAKING PART IN THE SPANISH CIVIL WAR, FEBRUARY 20, 1937<sup>1</sup>

*Given by the State Head by Decrees of the 20th February, 1937*  
(RT 17—1937)

## I

§ 1. It is prohibited for Estonian citizens to take part in the Spanish Civil War on either side. It is also prohibited to enlist volunteers in Estonia for taking part in the Spanish Civil War, and making propaganda for this purpose.

§ 2. A foreign passport for travelling to Spain can be issued only to such persons in the case of whom the authorities issuing the passport have no doubt that their object in travelling to Spain is not to take part in the Spanish Civil War.

§ 3. An Estonian citizen who is guilty of taking part in the Spanish Civil War, no matter on which side, will be punished by imprisonment of not more than three years.

The same punishment will be inflicted on persons guilty of enlisting volunteers in Estonia for taking part in the Spanish Civil War or of making propaganda to this end.

The offences mentioned in this paragraph will come under the regulation of the General Section of the Criminal Law.

§ 4. The Minister of the Interior has the right to issue regulations for the carrying out of this Law.

## II

This Law will come into force with its publication.

<sup>1</sup> English text supplied by the Estonian Government.

## 9

## FINLAND

LAW REGARDING CERTAIN MEASURES TO PREVENT PARTICIPATION IN THE CIVIL WAR IN SPAIN, APRIL 30, 1937<sup>1</sup>

*(Translation)*

In accordance with the act of the Riksdag it is herewith provided:

<sup>1</sup> *Finlands Författningssamling*, 1937, No. 172.

## § I

Anyone recruiting or attempting to recruit persons for war service in Spain shall be punished by imprisonment of not more than one year, or by a fine, unless the act is covered by the criminal law.

## § II

Any Finnish citizen enlisting for war service in Spain shall be punished by imprisonment of not more than six months, or shall be fined.

## § III

Tickets for travel to Spain, or to any other country via Spain, may not be sold to anyone without permission from the proper passport authorities. Anyone violating the prohibition provided in section I shall be fined.

## § IV

The master of a Finnish ship calling at Spain must ensure that no traveller destined for Spanish ports be taken aboard who does not have the permission mentioned in section III,

regardless of the provisions of paragraph 51, section 2 of the Seamen's Code, he shall forbid the crew to land in Spain, except where their services there are essential, and

shall ensure that other persons on board the ship not having the permission mentioned in section 2 shall not land in Spain.

Ships' masters who disregard the provisions of this section shall be punished by fine.

## § V

It may be provided for by Decree, to be observed by Finnish ships calling at Spain, that

the ship must call at certain foreign ports to embark or to disembark duly appointed observing officers,

these observing officers aboard ship shall have accommodation, and messing at reasonable rates, shall be permitted, in accordance with regulations given to them, to examine the ship's cargo and passengers, also

masters shall permit naval vessels, which are specified in the agreement, to ascertain whether the observing officers are on board or not.

Ships' masters who disregard the provisions given in this section shall be punished by fine.

## § VI

Spain shall be understood to include, for the purposes of this Law, Spanish possessions and the Spanish Zone of Morocco.

## § VII

Further measures concerning this Law shall be made by decree.

## § VIII

This Law remains in force until April 1, 1938, but may be discontinued by decree prior to that date. The punishment provided for in this Law shall be given even after this date for any violation committed during its operation.

## 10

## FRANCE

I. LAW AUTHORIZING THE GOVERNMENT TO TAKE ALL MEASURES SERVING TO PREVENT THE DEPARTURE OF VOLUNTEERS FOR SPAIN, JANUARY 21, 1937<sup>1</sup>

*(Translation)*

The Senate and Chamber of Deputies have adopted,

The President of the Republic proclaims the law the terms of which are as follows:

ARTICLE 1. The Government is authorized to take by means of Decree in the Council of Ministers all measures serving to obstruct:

1. Upon territories under the sovereignty or authority of France:

(a) The enlistment and acts leading to the enlistment of persons for the forces now in conflict in Spain or in the Spanish possessions including the Spanish Zone of Morocco;

(b) Departure and transit of all persons bound for those regions for the said purpose;

2. Enlistment in the said forces of French nationals [*ressortissants*] outside of national territory.

Measures prescribed in the preceding paragraphs shall take effect from the date which is to be fixed by an international accord, and for a period of six months.

ART. 2. Infractions of the prohibitions laid down under the conditions prescribed in Article 1 shall be punished by imprisonment of from one to six months and by a fine of from 100 to 10,000 francs, or by one of these penalties. In case of repetition, the penalty of imprisonment may be extended to one year.

The present law, deliberated and adopted by the Senate and Chamber of Deputies, shall be executed as a law of the State.

II. DECREES CONCERNING THE APPLICATION OF THE PROVISIONS OF THE LAW OF JANUARY 21, 1937, AUTHORIZING THE GOVERNMENT TO TAKE MEASURES SERVING TO PREVENT THE DEPARTURE OF VOLUNTEERS FOR SPAIN, FEBRUARY 18, 1937<sup>2</sup>

*(Translation)*

1. The President of the French Republic,  
In consideration of the law of January 21, 1937;  
Having heard the Council of Ministers,

<sup>1</sup> Supplied by the Government of France.

<sup>2</sup> *Journal Officiel*, Feb. 19, 1937, pp. 2274-2276.

## DECREES:

ARTICLE 1. French nationals [*ressortissants*] are forbidden to take service with the armed forces in Spain or Spanish possessions, including the Spanish Zone of Morocco.

ART. 2. Recruitment, in any form whatever, for the armed forces specified in Article 1, as well as all acts leading to enlistment in the said forces are prohibited on French territory.

Consequently, the following are particularly prohibited:

1. The opening and operating of recruiting offices;
2. Recruitment in public meetings or by means of canvassing residences, as well as publication of notices in newspapers or over the radio, the sending of circulars, gifts and deposits, promises, threats and abuse of authority or of power directed to the same end.

ART. 3. Every person whether of French nationality or an alien, with the exception of persons of Spanish nationality, who are on French territory, are forbidden to leave that territory for Spain or the Spanish possessions, including the Spanish Zone of Morocco, for the purposes specified in Article 1.

Transit across French territory under the same conditions is forbidden.

ART. 4. Penalties provided for by the law of January 21, 1937, are applicable to infractions of the present decree.

ART. 5. The provisions of Articles 2, 3 and 4 are applicable in Algeria, the colonies, and the territories under French mandate.

ART. 6. The provisions of the present decree shall enter into force on February 21.

ART. 7. The President of the Council, the Keeper of the Seals, Minister for Justice, the Minister for National Defence and War, the Minister for the Interior, the Minister for Foreign Affairs, the Minister for the Navy, the Minister for Air, the Minister for Public Works, the Minister for Colonies and the Minister for Post, Telegraph and Telephone are charged, each in so far as it concerns him, with the execution of the present Decree.

2. The President of the French Republic,

In consideration of the law of January 21, 1937;

In consideration of the Decree of today's date;

Upon the proposal of the President of the Council, of the Minister for the Interior, the Minister for Foreign Affairs, the Minister for Air, the Minister for Public Works and the Minister for the National Economy;

Having heard the Council of Ministers,

## DECREES:

ARTICLE 1. The application of direct international rates for the transport of travellers to a destination beyond the last French stations on railway lines going into Spain is and remains suspended until further notice.

ART. 2. Except in the last French stations on railway lines entering

Spain, it is forbidden to railway administrations to deliver direct tickets to travellers coming from a French locality and going to a destination beyond the above-mentioned stations.

ART. 3. In the last stations of France situated on railway lines entering Spain, tickets for a destination beyond those stations may not be delivered except by a railway administration upon examination of a passport invested with the visa of exceptional validity for Spain instituted by the Interministerial Order of the Ministers for the Interior and for Foreign Affairs of today's date, and upon presentation of a special authorization issued by special police authorities and mentioning the number of the passport.

The date of that authorization may not be previous to the day preceding the day upon which the ticket is issued.

ART. 4. Travel Agencies and other similar enterprises are forbidden to issue tickets to travellers for a destination beyond the last French stations situated on railway lines entering Spain.

ART. 5. French navigation companies insuring the transport of travellers will alone issue, to the exclusion of all travel agencies or similar organizations, tickets for a destination in Spain or the Spanish possessions, including the Spanish Zone of Morocco, upon examination of a passport furnished with a visa of exceptional validity for Spain instituted by the Interministerial Order of the Minister for the Interior and the Minister for Foreign Affairs, of today's date, and upon presentation of a special authorization issued by police authorities of the port and mentioning the number of the passport.

The date of that authorization may not be previous to the day preceding the day upon which the ticket is issued.

ART. 6. Masters and owners of French ships are forbidden to accept aboard their ships or to allow to disembark at a Spanish port anyone not authorized to go to Spain or the Spanish possessions in accordance with the terms prescribed in the preceding article.

ART. 7. Apart from commercial aircraft engaged in regular service, all other aircraft are forbidden to take off from a French airdrome for Spain or its possessions, except upon special authorization issued by representatives of the Minister for the Interior.

ART. 8. In conformity with Article 30 of the law of May 31, 1924, all aircraft, private or commercial, bound for Spain or coming from Spain, must, upon departure and arrival, land at one of the frontier airdromes of Marseille-Marignane, Perpignan-Llabanère, Toulouse-Francal and Biarritz-Bayonne-Anglet.

ART. 9. Flight over the zone of the French Pyrenees is prohibited over a distance of 10 kilometers from the Franco-Spanish frontier, as well as flight over French territorial waters corresponding to that zone up to three miles from the coast. However, aircraft flying at an altitude lower than 1,000 meters may approach within a half-mile from the coast.

Further, there is in use in the eastern part of the zone, on one side and

the other of national route No. 9 ending at the Perthus a corridor of a total width of 7 kilometers.

ART. 10. Only authorized air transport companies may issue passage to a destination in Spain and its possessions, to the exclusion of all travel agencies or similar organizations. These tickets may not be issued except for the airdromes of Marseille-Marignane, Toulouse-Francal, Perpignan-Llabanère and Biarritz-Anglet upon examination of a visa of exceptional validity for Spain instituted by the Interministerial Order of the Minister for the Interior and the Minister for Foreign Affairs, of today's date, and upon presentation of an authorization of special nature issued by the police authorities of the airdrome and mentioning the number of the passport.

However, travellers coming from abroad who would cross France in order to enter Spain, or its possessions, shall be exempt from the obligation of taking a new ticket for the mentioned airdromes, but they must present as all other travellers a passport furnished with the visa of exceptional validity for Spain and the Spanish possessions, including the Spanish Zone of Morocco.

ART. 11. The commander on board or the pilot of an aircraft engaged in an international flight which necessitates flight over or landing in Spain, upon taking off from any airdrome, must notify the authorities of that airdrome, if it is public, or the proprietor or beneficiary, if it is private, specifying the customs airdrome at the border at which he will land to fulfil the formalities previously prescribed.

Authorities of public airdromes (airport commander in conjunction with the special commissioner's office), proprietors or beneficiaries of private airdromes shall immediately inform the selected customs airdrome at the frontier of these departures, and the latter, after the aircraft has landed there, shall give confirmation of that fact to the airdrome from which the aircraft took off.

In the event that the authorities, the proprietor or beneficiary of the airdrome from which the aircraft took off should not receive notice within a normal time of the landing at the customs airdrome, they shall inform the prefecture for the territory where the field is located.

If the aircraft is forced to land during the course of its flight from the airdrome from which it took off to the customs airdrome at the frontier, the commander on board or the pilot shall immediately notify the authorities of the customs airdrome before recommencing flight in that direction.

ART. 12. If an aircraft belonging to an air-transport company is forced, during the course of a regular trip, to land in Spanish territory, because of *force majeure*, with passengers holding only transit visas, or who are not near their destination in Spain, the commander of the aircraft must notify without delay the French consul of the place nearest to where he has come down. The consul shall rule as to the opportunity for repatriating the passengers, and provide for it, if necessary. He shall, further, notify the French customs airdrome from which the aircraft took off.

In case of the incapacity of the aircraft commander, the obligation of the



preceding paragraph falls upon other members of the crew and, if none of them is in a condition to fulfil it, upon the official of the company who first learns of the accident.

ART. 13. Any airplane pilot of a private plane forced, by some reason of *force majeure*, to land on Spanish territory, must make a declaration to that effect to the competent French consular authority. If the airplane cannot continue its voyage in the air, the consular authority shall take care of its repatriation. It shall likewise rule upon the eventual repatriation of the passengers who may be on board.

It shall also be incumbent upon him to notify the customs airdrome at the frontier from which the airplane took off.

ART. 14. If, during the course of the stop of a regular commercial airplane at a Spanish airdrome, a passenger whose destination is another Spanish airdrome or one in the Spanish possessions, should take advantage of the stop to break his trip, the commander of the aircraft and the official of the company possibly residing at the airdrome must immediately notify the competent consular authority and the French customs airdrome from which the plane took off.

ART. 15. Infractions of the obligations laid down in the present Decree shall be subject to the penalties provided for in the Law of January 21, 1937.

ART. 16. The President of the Council, the Minister for the Interior, the Minister for Foreign Affairs, the Minister for Air, the Minister for the National Economy are charged, each in so far as it concerns him, with the execution of the present Decree.

### 3. The Ministers for the Interior and for Foreign Affairs,<sup>3</sup>

In consideration of the Law of January 21, 1937, authorizing the Government to take all measures serving to prevent the departure of volunteers for Spain;

In consideration of the Decree of today's date taken in conformity with Article 1, paragraph 1 of the aforementioned Law,

#### DECREE:

ARTICLE 1. From February 21, 1937, and until further notice, the validity of French passports, identity certificates, identity and travel papers, identity and travel certificates (in a word, all travel papers issued by French authorities in France and abroad) shall be suspended with reference to Spain and Spanish possessions, including the Spanish Zone of Morocco.

The same shall hold for all visas affixed, in France or abroad, by the authorities to passports or travel papers of foreigners.

ART. 2. Only those persons, other than those of Spanish nationality, whose passports or travel papers bear a visa especially issued for the purpose by a French authority, after justification of the object of the voyage, shall be

<sup>3</sup> *Journal Officiel*, Feb. 19, 1937, pp. 2276-2277.

permitted to cross the frontier in order to go to Spain and the Spanish possessions, including the Spanish Zone of Morocco.

ART. 3. In application of the provisions of Article 1 of the present Order, every French passport, identity certificate, identity and travel paper, identity and travel certificate must, hereafter and until further notice, bear the endorsement—in red ink—"not valid for Spain and Spanish possessions, including the Spanish Zone of Morocco."

ART. 4. The same endorsement must be likewise affixed to all of these documents which, from the date of the publication of the present Order, are renewed or extended.

ART. 5. The visa prescribed by Article 2 of the present Order for persons, other than Spaniards, authorized to go to Spain and Spanish possessions, including the Spanish Zone of Morocco, shall be affixed by the Prefect—or the Sub-Prefect, for districts located on the Franco-Spanish frontier—or by French consular authorities abroad, and shall not be issued except upon justification of the purposes of the voyage, in the same form as the "return" visa meant for foreigners who leave our territory to return there shortly.

In principle, this visa shall be valid for only a single voyage.

## II

### GERMANY

#### I. LAW OF NATIONALITY, JULY 22, 1913<sup>1</sup>

SECTION 28. A German who enters the service of a foreign country without the permission of his government may be declared to have lost his citizenship by decision of the central authorities of his home state, if he does not comply with an order to retire therefrom. . . .

#### II. LAW FOR THE PREVENTION OF PARTICIPATION IN THE SPANISH CIVIL WAR, FEBRUARY 18, 1937<sup>2</sup>

##### (Translation)

The German Government has decided on the following law which is herewith proclaimed:

§ 1. German citizens are forbidden to enter Spain and the Spanish possessions, including the Spanish Zone of Morocco, for the purpose of participating in the Civil War.

§ 2. The Minister of the Interior is empowered to take the necessary measures to prevent the departure and transit of persons who intend to go to the territories designated in section 1 for the purpose of participating in the Spanish Civil War.

§ 3. It is forbidden to recruit persons for participation in the Spanish Civil War or to promote such recruiting.

<sup>1</sup> Flournoy and Hudson, *op. cit.*, pp. 306, 311.

<sup>2</sup> *Reichsgesetzblatt*, Teil I, No. 23, 1937.

§ 4. Anyone who violates the measures of sections 1 and 3 of this law, or who violates a prohibition decreed for the purpose of applying section 2 will be imprisoned.

§ 5. The Minister of Foreign Affairs shall decide on the day on which this law shall enter into force or terminate.

III. DECREE CONCERNING THE ENTRANCE INTO FORCE OF THE LAW FOR THE PREVENTION OF PARTICIPATION IN THE SPANISH CIVIL WAR, FEBRUARY 19, 1937<sup>3</sup>

(Translation)

By authority of section 5 of the Law for the Prevention of Participation in the Spanish Civil War of February 18, 1937, it is decreed:

The Law shall go into force on February 21, 1937.

IV. DECREE FOR THE APPLICATION OF THE LAW FOR THE PREVENTION OF PARTICIPATION IN THE SPANISH CIVIL WAR, FEBRUARY 20, 1937<sup>4</sup>

(Translation)

§ 1. (1) Passports of German citizens with residence or sojourn in Germany are only valid for travel to Spain and to Spanish possessions, including the Spanish Zone of Morocco, and for transit through these territories, if the validity of the passport is expressly extended by the proper official for these territories.

(2) The additional sentence in regard to the validity of the passport for these territories (Sec. 1) reads:

"Valid also for travel to and through Spain."

(3) German citizens are forbidden to leave Germany for these territories unless the validity of the passport has been extended to these territories.

§ 2. Persons who do not possess German citizenship are forbidden to enter or leave Germany for the purpose of participating in the Spanish Civil War.

§ 3. The border police officials are ordered to prevent persons from passing the frontier when there is reason to assume that they wish to participate in the Spanish Civil War.

§ 4. This Decree shall enter into force on February 21, 1937.

<sup>3</sup> *Ibid.*, No. 24, 1937, p. 247.

<sup>4</sup> *Ibid.*, p. 248.

GREECE

I. LAW NO. 391 OF OCTOBER 29, 1856, REGARDING CIVIL RIGHTS, AS AMENDED TO DATE<sup>1</sup>

ARTICLE 23. He loses his quality of a Greek who: . . .

(b) Accepts without royal permission, employment in the service of a

<sup>1</sup> Flournoy and Hudson, *op. cit.*, pp. 315, 317.

foreign government, and who after being directed by the Greek Government to leave such employment within a stated period, keeps on without complying. . . .

ART. 28. A person who has entered foreign military service without royal permission may recover his Greek nationality if having returned to Greece, and having previously obtained royal permission, he fulfills the conditions imposed on an alien for becoming naturalized.

## II. LAW NO. 511, REGARDING PROHIBITION OF CONSCRIPTION OR OF DEPARTURE OF VOLUNTEERS TO SPAIN, MARCH 2, 1937<sup>2</sup>

### ARTICLE I

Conscription of any sort in Greece by groups, or individual participation of Greek citizens for the purpose of being sent to Spain to take part as volunteers either for the one or the other belligerent in that country is forbidden.

### ART. II

Enlistment of Greek citizens as volunteers in Spain is forbidden.

### ART. III

Violators of the above provisions are punishable by imprisonment of from 3 to 6 months and a fine up to 10,000 drachmas.

<sup>2</sup> Translation furnished by the Greek Government.

## 13

## HUNGARY

### I. DECREE OF THE ROYAL HUNGARIAN CABINET OF MINISTERS CONCERNING NON-INTERVENTION IN SPAIN, FEBRUARY 20, 1937<sup>1</sup>

(*Translation*)

#### SECTION I

The Hungarian Government has agreed to the following propositions submitted to it by the International Committee for the Realization of Non-Intervention in the Events in Spain:

1. The contracting Governments could agree to take all the measures that seemed necessary to forbid under severe penalty the recruiting of their citizens, either by their own citizens or by persons of foreign citizenship, for the purpose of taking part in the present Spanish conflict.

2. The contracting Powers could decide that the means of recruiting which ought to be forbidden according to paragraph 1 should include the following:

(a) the establishment of recruiting bureaus;

(b) the recruiting of soliders by advertisement in newspapers, or by

<sup>1</sup> *Budapesti Közlöny*, No. 42, February 21, 1937. Decree No. 1.050/1937.M.E.

radio, or by appeals to enlist in public meetings, or by house to house canvassing, or by circulars addressed to groups or to individuals either through the mail or by any other manner;

(c) the enlisting of soldiers by giving cash or other gifts, by promises or threats, by misuse of authority or official position.

3. The contracting Governments could take the obligation that they will take all official steps to prevent their citizens offering their services to either of the parties fighting in Spain, and for this purpose they could undertake the following obligations:

(a) to forbid their citizens by legal means (as far as such prohibition does not exist already) to engage in military service on either side in the civil war;

(b) to warn their citizens by public declaration that such service is against the law and those returning home after the conclusion of hostilities expose themselves to punishment.

4. The contracting Governments could take the obligation to take all suitable measures to prevent the transit to Spain through their territories of citizens of other states which have joined the Non-Intervention Agreement, and for this purpose they could take the following obligations:

(a) to cancel the validity of passports already granted for Spain by stamping "not valid for travel to Spain" on the passports;

i. For passports granted after the Non-Intervention Agreement becomes effective;

ii. For passports granted before this time-limit, as soon as the passports come into the hands of the proper authorities.

(b) to require from persons who desire to travel to Spain that their passports should be provided with a clause, and this clause may be attached to the passport only when the applicant can prove that he has acceptable and sufficient reasons for travelling to Spain, for instance, that he is an employee of a diplomatic or consular office, that he has economic interests which make his presence in Spain necessary, or that he wishes to travel to Spain in order to work in a well-known charitable institution, or that he may wish to go as a reporter, or that he may have other serious and acceptable reasons for going;

(c) to instruct their diplomatic and consular officers about the changes concerning the granting of passports under points (a) and (b);

(d) to inform the public by publishing an official announcement of the measures as recommended in points (a) and (b);

(e) to regard it as a criminal offence if a citizen of the contracting States which agreed to Non-Intervention attempts to leave the territory of that state in order to travel to Spain, unless the citizen is in possession of a passport provided with a clause described above under point (b).

5. The contracting Governments could agree:

(a) to take all the steps that are suitable to prevent their citizens

from leaving their country by land or by sea or by air in order to take up military service on either side in Spain;

(b) to authorize the Governments of all states that joined the Non-Intervention Agreement to prevent the citizens of all these states from leaving their territories for purposes specified under (a).

6. The following steps could be taken by the Governments to prevent persons leaving their territories by land under circumstances described above under paragraph 5 :

(a) to prohibit under severe penalty railroad companies, travel bureaus, and similar enterprises to sell tickets for travel to Spain except in cases where the person intending to travel has a passport valid for Spain granted to him by his own Government, or if he is a citizen of a country which joined the Non-Intervention Agreement he is in possession of a passport with a clause as specified under paragraph 4(b) ;

(b) introduction of measures that would enable the authorities of the states that joined the Non-Intervention Agreement to prevent the crossing of their territories by persons travelling to Spain without a passport granted them by their own Government, or if they are citizens of states which joined the Non-Intervention Agreement they are not in possession of passports containing the clause specified above under paragraph 4(b).

7. The following measures could be taken by the contracting Governments to prevent persons from leaving their territories by sea under circumstances specified above under paragraph 5 :

(a) introduction of measures by which the masters of vessels which are specified below in paragraph 9, registered in the countries joining the Non-Intervention Agreement could be forbidden to accept any passenger for Spain unless he has the right to travel by satisfying the conditions as specified in paragraph 4(b) ; introduction of severe punishments against masters and ship-owners disobeying these measures ;

(b) introduction of measures that would enable the proper authorities to forbid the sailing of a vessel carrying passengers for Spain who do not satisfy the conditions as specified under paragraph 6(a) ;

(c) the authorization and obligation of the masters of vessels sailing for Spain to prevent the landing of passengers in Spanish ports who are not entitled to land according to the specifications as stated above in paragraph 4(b), or below in (e) ;

(d) directing the masters of vessels sailing under the flag of any of the states that joined the Non-Intervention Agreement to forbid the landing in Spanish ports of members of the crew unless such landing is necessary in connection with the voyage or with the unloading of the cargo ;

(e) introduction of measures by which the owners or masters of all vessels sailing under the flag of all states that joined the Non-Intervention Agreement would be forbidden to accept as passengers persons who

are not citizens of these states or do not possess passports provided with the visa by the state in which the vessel is registered; such visa to be granted free of charge in cases specified above under paragraph 4(*b*), or in analogous cases.

8. Measures taken by the contracting Governments for the purpose of preventing persons from leaving their territories by air under circumstances specified in paragraph 5 could be adapted to those that apply to persons leaving these states by sea, and which are described above in paragraph 7(*a*), (*b*), (*c*).

9. The contracting Governments will adhere without doubt to the proposal that whatever the nature of the limitations concerning the leaving for Spain by sea or air, these limitations will apply not only to the regular commercial or passenger vessels or aircraft but also to all ships or aircraft owned privately or controlled or operated by the Governments of the states joining the Agreement, including the fleet and the air fleet of these nations.

10. The extension of the Agreement of Non-Intervention to the question of travelling to Spain for the purpose of fighting on either side of the civil war would entail as a consequence the enactment of special measures, such as:

(*a*) the Governments of the states having common boundaries with Spain could take the obligation to take the necessary measures to strengthen the frontier guards on the Spanish border, and to instruct especially the proper authorities to prevent the crossing of the border by the citizens of the states that joined the Non-Intervention Agreement unless they possess a passport provided with a clause as specified in paragraph 4(*b*);

(*b*) inasmuch as the fighting factions in Spain would accept the proposal submitted to them respecting the supervision of the borders, members of the International Committee in charge of supervising the border would be authorized to co-operate with the border supervising committees of states bordering on Spain which would make possible the harmonious co-operation in the supervising activities on both sides of the said borders.

11. The contracting Governments ought to assume the obligation that in case the agreement regarding Non-Intervention should be extended to cover foreign citizens entering Spain for the purpose of performing military service on either side of the fighting factions, they will report within the shortest possible time to the International Committee about all the measures taken in order to carry out the extension.

## SEC. II

All of the measures made necessary by the agreement mentioned in Section I belong to the sphere of influence of the Minister of Foreign Affairs, the Minister of Internal Affairs, and to the Minister of Commerce and Transportation.

## SEC. III

This order goes into effect the day of its publication.

II. DECREE OF THE ROYAL HUNGARIAN MINISTER OF THE INTERIOR CONCERNING PASSPORT RESTRICTIONS, MARCH 6, 1937 <sup>2</sup>

(Translation)

In order to fulfill the international obligation of Non-Intervention in the Events in Spain, which has been accepted, and published in Section I, paragraphs 4(a), (b) and (e) of the Decree No. 1.050/1937.M.E., I order the following:

## SECTION I

Passports granted before the coming into force of the present Decree and valid for Spain, the Spanish colonies and the Spanish Zone in Morocco, cease to be valid for travel to those parts.

## SEC. II

Hungarian authorities can under no circumstances give out passports for the territories mentioned in Section I without my previous permission. Petitions for passports to the Spanish territories described in Section I must be forwarded to me for decision, together with the respective documents and papers certifying the necessity of travelling.

## SEC. III

All passports that were granted before the present Decree became effective, as well as those that were given out after that date without my special permission for the Spanish territories mentioned in Section I, must be signed as invalid as soon as they come into the hands of the proper authorities. This suppression has to be written in the section of the passport bearing the inscription, "For what countries is the passport valid," as is done already regarding the different countries (for instance: for Europe with the exception of Spain).

## SEC. IV

In a passport which by my permission will be valid for the territories mentioned in Section I this fact will have to be shown conspicuously in the same section, thus: "This passport is valid for Spain, the Spanish colonies and the Spanish Zone in Morocco."

## SEC. V

It is forbidden to cross the Hungarian frontier with a passport not valid for the territories mentioned in Section I with the intention or attempt to

<sup>2</sup> *Budapesti Közlöny*, No. 54, March 7, 1937. Decree No. 109.800/1937.B.M.



travel to those territories. The violation of these prohibitions—in case the act is not punishable more severely—constitutes a misdemeanor, punishable by 15 days' detention.

The prosecution of the misdemeanor belongs under the jurisdiction of the administrative authorities, and in the places under the Royal Hungarian Police under the police jurisdiction.

In the third degree it belongs under the jurisdiction of the Minister of the Interior.

### III. DECREE OF THE ROYAL HUNGARIAN MINISTER OF THE INTERIOR FORBIDDING ENLISTMENT FOR MILITARY SERVICE IN SPAIN, MARCH 6, 1937 <sup>3</sup>

#### (Translation)

In order to fulfill the International obligation of Non-Intervention in the Events in Spain which has been accepted and published in Decree No. I.050/-1937.M.E., Section I, paragraph 3 (a) :

#### SECTION I

It is forbidden a Hungarian citizen to take military service on either side in the Spanish civil war.

The violation of this prohibition, in so far as it is not punishable more severely, is a misdemeanor and is punishable by 15 days' detention.

The prosecution of the misdemeanor belongs under the jurisdiction of the administrative authorities, and in places under the Royal Hungarian Police under the jurisdiction of the police.

In the third degree it belongs under the jurisdiction of the Minister of the Interior.

#### SEC. II

If a person takes military service on either side in the Spanish civil war, contrary to the prohibition contained in Section I, he is liable to lose his Hungarian citizenship according to the Law No. L, Section 30, of 1879.

### IV. DECREE OF THE ROYAL HUNGARIAN MINISTER OF COMMERCE AND TRANSPORTATION CONCERNING TRAVEL RESTRICTIONS TO SPAIN, MARCH 9, 1937 <sup>4</sup>

#### (Translation)

In order to fulfill the international obligation of Non-Intervention in the Events in Spain which has been accepted and published in Section I, paragraph 6(a), as well as in paragraphs 7 and 9 of the Decree No. I.050/-1937.M.E., of the Royal Hungarian Cabinet, I order the following :

<sup>3</sup> *Budapesti Közlöny*, No. 54, March 7, 1937. Decree No. 173.111/1937.B.M.

<sup>4</sup> *Ibid.*, No. 57, March 11, 1937. Decree No. 2.700/1937.K.K.M.

## THE SPANISH CIVIL STRIFE

## SECTION I

All bureaus of travel and transportation are forbidden to sell tickets to Spain, the Spanish colonies or the Spanish Zone in Morocco, to persons not possessing passports as specified in Section I, paragraph 6(*a*) of the above-mentioned Decree.

## SEC. II

Commanders of ocean-going vessels registered in Hungary are not allowed to accept or to transport passengers to the Spanish ports or territories described in Section I unless the traveller satisfied the conditions specified in Section I, paragraph 4(*b*) of the above-mentioned Decree, and thus has a right to travel.

## SEC. III

The proper authorities may forbid the vessels to leave port if they carry passengers to Spanish territories described in Section I, who, according to Section I, paragraph 6(*a*) of the above-mentioned Decree, are not entitled to travel.

## SEC. IV

It is the duty of the commanders of Hungarian ocean-going vessels to prevent the landing in Spanish ports for any reason of passengers who do not possess passports in accordance with Section I, paragraph 4(*b*) of the above-mentioned Decree, or a passport provided with a clause as specified in Section I, paragraph 7(*e*) of the same Decree.

## SEC. V

It is the duty of commanders of ocean-going vessels sailing under the Hungarian flag to forbid the landing in Spanish ports of persons belonging to the crew unless work connected with the unloading of the cargo or with the voyage of the vessel makes such landing necessary.

## SEC. VI

The commanders or owners of ocean-going vessels sailing under the Hungarian flag are not allowed to accept as passengers or to transport to the territories mentioned in Section I persons who are citizens of countries which did not sign the Non-Intervention Agreement and who do not possess passports from Hungarian authorities satisfying the conditions of Section I, paragraph 7(*e*) of the above-mentioned Decree.

## SEC. VII

These rules pertain not only to Hungarian commercial vessels transporting goods and passengers but also to privately owned vessels and to ocean-going vessels controlled or run by the Hungarian Government.

## SEC. VIII

The rules contained in Sections II, III and IV pertain also to aircraft.

## SEC. IX

Violations of the provisions of Sections I, II and VI, inasmuch as this act is not punishable more severely, constitute a misdemeanor punishable by 15 days' detention. The prosecution of the misdemeanor belongs under the jurisdiction of administrative authority, and in territories under the Royal Hungarian Police under the jurisdiction of the police. Misdemeanors that take place on a vessel are prosecuted by the police department of Budapest, to which the vessel belongs according to its registration. According to the Law No.XXX of 1929, Section 59, No.1(3), the Minister of Commerce and Transportation shall be regarded as the authority administering these ordinances.

## 15

## IRISH FREE STATE

I. SPANISH CIVIL WAR (NON-INTERVENTION) ACT, FEBRUARY 24, 1937<sup>1</sup>

An Act to carry into execution the international obligations of Saorstat Eireann [The Irish Free State] in relation to the Civil War now being waged in Spain, and to make such provisions as are necessary or expedient for that purpose, and in particular to prohibit citizens of Saorstat Eireann from participating in that war. (February 24, 1937.)

BE IT ENACTED BY THE OIREACHTAS OF SAORSTAT EIREANN AS FOLLOWS:

1. This Act may be cited as the Spanish Civil War (Non-Intervention) Act, 1937.

2. (1) This Act shall come into operation on such day as the Executive Council shall by order appoint for that purpose, and shall (unless continued under the next following sub-section of this section) expire at the expiration of six months from that day.

(2) So long as this Act is in force, the Executive Council may, whenever and so often as they think proper, by order continue this Act in force for such time (not exceeding six months from the date on which it would otherwise expire) as they shall think proper and shall specify in such order and, whenever any such order is made by the Executive Council, this Act shall continue in force in accordance with such order and shall (unless further continued under this sub-section) then expire.

(3) If the Executive Council do not, within one year after the passing of this Act, appoint the day on which this Act is to come into operation, this Act shall expire at the expiration of one year from the passing of this Act.

(4) Notwithstanding anything contained in this section, a person may be arrested and tried and, if convicted, may be punished under this Act after the expiration thereof for an offence under any section of this Act committed or alleged to have been committed by him while this Act was in force.

<sup>1</sup> Supplied by the Government of the Irish Free State.

## 3. In this Act—

the expression “the war” means the civil war which is being waged in Spain at the passing of this Act;

the word “belligerent” means one of the governments or organisations in the nature of governments between whom the war is being waged;

the expression “military forces” includes all combatant forces whether fighting on land, on the sea, or in the air, and includes also all services and organisations which, though not actually combatant, render necessary or ancillary services to the combatant forces or any part of the combatant forces, but does not include any body of persons in respect of which the Minister for Justice has issued under this Act a certificate that such body of persons is a Red Cross unit for the purposes of this Act;

4. Whenever the Minister for Justice is satisfied in respect of a body of persons (in this section referred to as a unit) serving or proposing or intending to serve with the military forces of a belligerent—

(a) that such unit is organised by or is working under the auspices of a society or organization (whether established in Saorstát Éireann or in another country) having as its object or one of its objects the furnishing of volunteer aid to the sick and wounded of armies in time of war, and

(b) that such unit is in or proceeding to or proposes or intends to proceed to Spain or any Spanish territory solely for the purpose of furnishing volunteer aid to the sick and wounded of the military forces of the belligerents and rendering other humanitarian services to the members of those forces, and

(c) that the members of such unit will not take any combatant part in the war or render any combatant service to either belligerent, the said Minister may issue to the society or organisation by which such unit is organised or under the auspices of which such unit is working a certificate sealed with the official seal of the said Minister certifying that such unit is a Red Cross unit for the purposes of this Act.

5. (1) It shall not be lawful—

(a) for any person who is a citizen of Saorstát Éireann and is not, at the passing of this Act, a member of the military forces of a belligerent to accept or to obtain or attempt to obtain any commission or engagement in or otherwise to join or become a member of or attempt to join or become a member of the military forces of a belligerent, or

(b) for any person to induce or attempt to induce persons generally or any particular person to serve in or accept any commission or engagement in the military forces of a belligerent, or

(c) for any person to aid or abet a citizen of Saorstát Éireann in obtaining or attempting to obtain a commission or engagement in or otherwise joining or becoming a member of or attempting to join or become a member of the military forces of a belligerent, or

(d) for any person to organise, aid, or abet the departure from Saorstát Éireann of persons departing from Saorstát Éireann for the

purpose of serving in the military forces of a belligerent, whether such persons have or have not accepted or been offered a commission or engagement in or joined or become a member of such forces.

(2) Every person who does any act (whether of commission or omission) which is a contravention of this section shall be guilty of an offence under this section.

6. (1) It shall not be lawful for any person who is a citizen of Saorstát Éireann to depart or attempt to depart from Saorstát Éireann for the purpose of proceeding to Spain or to any Spanish territory or to go from any place in Saorstát Éireann to any other place in Saorstát Éireann for the purpose of so departing from Saorstát Éireann, unless such person holds a passport issued to him by the Minister for External Affairs and bearing an endorsement, lawfully made thereon on or after the 1st day of January, 1937, declaring such passport to be valid for Spain and Spanish territory.

(2) Every person who, in contravention of this section, departs or attempts to depart from Saorstát Éireann or goes from a place in Saorstát Éireann to another place in Saorstát Éireann shall be guilty of an offence under this section.

7. (1) The Executive Council may, from time to time as occasion requires, by order appoint the countries to which this section applies.

(2) It shall not be lawful for any person who is a national of a country which is for the time being appointed by the Executive Council as a country to which this section applies to depart or attempt to depart from Saorstát Éireann for the purpose of proceeding to Spain or to any Spanish territory or to go from any place in Saorstát Éireann to any other place in Saorstát Éireann for the purpose of so departing from Saorstát Éireann, unless such person is the holder of a passport issued to him by the proper authority of the country of which he is a national and bearing an endorsement made thereon on or after the 1st day of January, 1937, by a lawful authority of such country, declaring such passport to be valid for Spain and Spanish territory.

(3) Every person who, in contravention of this section, departs or attempts to depart from Saorstát Éireann or goes from a place in Saorstát Éireann to another place in Saorstát Éireann shall be guilty of an offence under this section.

8. (1) It shall not be lawful for any person who is neither a citizen of Saorstát Éireann nor a national of a country which is for the time being appointed by the Executive Council as a country to which the next preceding section of this Act applies to depart or attempt to depart from Saorstát Éireann for the purpose of proceeding to Spain or to any Spanish territory or to go from any place in Saorstát Éireann to any other place in Saorstát Éireann for the purpose of so departing from Saorstát Éireann, unless such person is the holder of a passport issued to him by the proper authority of the country of which he is a national and expressly authorising him to proceed to Spain and Spanish territory.

(2) Every person who, in contravention of this section, departs or attempts to depart from Saorstát Éireann or goes from a place in Saorstát Éireann to another place in Saorstát Éireann shall be guilty of an offence under this section.

9. (1) It shall not be lawful for any person (in this section referred to as the ticket-seller) to sell or issue to or to procure or attempt to procure for another person (in this section referred to as the traveller) a ticket, pass, voucher, or other document entitling the holder thereof to travel directly or indirectly to Spain or to any Spanish territory unless the traveller has produced to the ticket-seller such passport as would preclude the departure of the traveller from Saorstát Éireann for the purpose of proceeding to the destination named in such ticket, pass, voucher, or other document from being unlawful by virtue of this Act.

(2) Every person who sells, issues, procures, or attempts to procure a ticket, pass, voucher, or other document in contravention of this section shall be guilty of an offence under this section.

(3) Whenever a company or a society sells, issues, procures, or attempts to procure a ticket, pass, voucher, or other document in contravention of this section, every director, manager, secretary, and other officer of such company or society who is knowingly a party to such contravention shall (without prejudice to the liability of such company or society in respect of such contravention) be guilty of an offence under this section and be punishable accordingly.

10. (1) The Executive Council may by order whenever they so think proper take all such measures, impose all such prohibitions and restrictions, and do all such things as shall, in the opinion of the Executive Council, be necessary or expedient to prevent the exportation from Saorstát Éireann to Spain or any Spanish territory of articles which are, in the opinion of the Executive Council, implements of war or war material.

(2) The Executive Council may by order at any time amend or revoke as they shall think proper any order previously made by them under this section.

11. (1) Any member of the *Gárda Síochána* may arrest without warrant any person who he reasonably suspects is committing or has committed an offence under any section of this Act.

(2) Any person who is guilty of an offence under any section of this Act shall be liable—

(a) on conviction thereof on indictment to a fine not exceeding five hundred pounds, or at the discretion of the Court, to imprisonment for a term not exceeding two years or to both such fine and such imprisonment, or

(b) on summary conviction thereof to a fine not exceeding fifty pounds or, at the discretion of the Court, to imprisonment for a term not exceeding six months, or to both such fine and such imprisonment.

## II. SPANISH CIVIL WAR (NON-INTERVENTION) ACT, 1937 (COMMENCEMENT) ORDER, FEBRUARY 24, 1937 <sup>2</sup>

Whereas it is enacted by subsection (1) of Section 2 of the Spanish Civil War (Non-Intervention) Act, 1937 (No. 1 of 1937), that that Act shall come into operation on such day as the Executive Council shall by order appoint for that purpose:

Now, the Executive Council, in exercise of the power conferred on them by Section 2 of the Spanish Civil War (Non-Intervention) Act, 1937 (No. 1 of 1937), and of every and any other power them in this behalf enabling, do hereby order as follows:

SECTION 1. This Order may be cited as the Spanish Civil War (Non-Intervention) Act, 1937 (Commencement) Order, 1937.

SEC. 2. The Interpretation Act, 1923 (No. 46 of 1923) applies to the interpretation of this Order in like manner as it applies to the interpretation of an Act of the Oireachtas.

SEC. 3. The Spanish Civil War (Non-Intervention) Act, 1937 (No. 1 of 1937), shall come into operation on the 25th day of February, 1937.

## III. SPANISH CIVIL WAR (NON-INTERVENTION) ACT, 1937 (APPOINTED COUNTRIES) ORDER, FEBRUARY 24, 1937 <sup>3</sup>

Whereas it is enacted by subsection (1) of Section 7 of the Spanish Civil War (Non-Intervention) Act, 1937 (No. 1 of 1937), that the Executive Council may, from time to time as occasion requires, by order appoint the countries to which the said Section 7 applies:

Now, the Executive Council, in exercise of the power conferred on them by Section 7 of the Spanish Civil War (Non-Intervention) Act, 1937 (No. 1 of 1937), and of every and any other power them in this behalf enabling, do hereby order as follows:

1. This Order may be cited as the Spanish Civil War (Non-Intervention) Act, 1937 (Appointed Countries) Order, 1937.

2. The Interpretation Act, 1923 (No. 46 of 1923), applies to the interpretation of this Order in like manner as it applies to the interpretation of an Act of the Oireachtas.

3. The several countries named in the Schedule to this Order are hereby appointed to be the countries to which Section 7 of the Spanish Civil War (Non-Intervention) Act, 1937, applies.

### SCHEDULE

Albania, Austria, Belgium, United Kingdom of Great Britain and Northern Ireland, Bulgaria, Czechoslovakia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxemburg, Netherlands, Norway, Poland, Portugal, Roumania, Sweden, Turkey, Union of Socialist Soviet Republics, Yugoslavia.

<sup>2</sup> *Irish Press*, Feb. 25, 1937.

<sup>3</sup> *Ibid.*

15  
ITALY

I. LAW CONCERNING NATIONALITY, JUNE 13, 1912<sup>1</sup>

ARTICLE 8. One loses citizenship: . . .

(3) When having accepted employment from a foreign government, or having assumed the military service in a foreign power, he persists in that position, in spite of the Italian Government's instruction to abandon within a fixed lapse of time the said employment or service. . . .

ART. 9. He who has lost citizenship in pursuance of Articles 7 and 8 may reacquire it:

(1) If he performs military service in the kingdom or if he accepts employment from the state;

(2) If he declares his renunciation of the citizenship of the state to which he belongs, or if he proves that he has given up the employment or the military service abroad which had been maintained in spite of the prohibition by the Italian Government; and in both cases if he has established or if he establishes within one year from the date of the renunciation, his residence in the kingdom;

(3) After two years of residence in the kingdom, if the loss of citizenship had been due to the acquisition of foreign citizenship.

Nevertheless, in the cases contemplated in paragraphs 2 and 3, the reacquiring of citizenship shall have no effect, if the government forbids it. This prohibition may be declared by the government for serious reasons, and in conformity with the expressed opinion of the Council of State, within the period of three months from the fulfillment of the conditions established in the said paragraphs 2 and 3, if the foreign citizenship latest acquired be that of an European country, or within the period of six months in other cases.

The reacquiring of citizenship is possible without the fulfillment of the condition providing for establishment of residence in the kingdom, to those who abandoned not less than two years before, residence in the state to which they belonged, transferring it to some other foreign country without assuming the latter's citizenship. To reacquire citizenship in this case, however, it is necessary to have gained previously the permission of the government.

II. LAW NO. 108 OF JANUARY 31, 1926, IN REGARD TO CITIZENSHIP<sup>2</sup>

SOLE ARTICLE. In addition to the cases indicated in Article 8 of Law No. 555, of June 13, 1912, a citizen loses his citizenship if he commits, or assists in committing abroad, an act directed towards the disturbance of public order in the kingdom, or from which may result damage to Italian interests or diminution of the good name and prestige of Italy, even though such act does not constitute a crime.

Loss of citizenship is declared by royal decree, on the recommendation

<sup>1</sup> Flournoy and Hudson, *op. cit.*, pp. 363, 364-365.

<sup>2</sup> *Ibid.*, p. 374.



of the Minister of the Interior, in agreement with the Minister for Foreign Affairs, after hearing the opinion of a commission composed of a Counsellor of State, as president, the Director General of Public Security, a Director General of the Ministry of Foreign Affairs, appointed by the Minister for Foreign Affairs, and two magistrates of the Court of Appeal, appointed by the Minister of Justice.

To the loss of citizenship may be added, on an opinion to that effect of the above-mentioned commission, sequestration and, in more serious cases, confiscation of property.

In the decree which pronounces the sequestration is laid down the duration of such sequestration and the destination of the income of the property.

Foreign citizenship subsequently acquired by the owner of the property has no effect on the efficacy of the order of sequestration or confiscation.

Loss of citizenship carries with it the loss of titles, salaries and dignities belonging to the ex-citizen.

Loss of citizenship pronounced in accordance with this law has no effect on the national status of the wife (or husband) or children of the ex-citizen.

### III. ROYAL DECREE-LAW CONTAINING PROVISIONS RELATING TO THE PROHIBITION OF ENLISTMENT OF VOLUNTEERS FOR SPAIN, FEBRUARY 15, 1937<sup>3</sup>

*(Translation)*

In consideration of Article 3, No. 2, of the Law of January 31, 1926, No. 100;

In consideration of the necessity and urgency for provision;

#### ARTICLE 1

Whoever in the territory of the State enlists or engages in activity directed toward enlisting or toward the encouragement of enlistment of persons for the rendering of service with the forces fighting in Spain, in the Spanish possessions or in the Spanish zone of Morocco, is punishable by imprisonment of from one to three years.

Any person consenting to render service with the forces fighting in the territories indicated in the preceding paragraph is punishable with imprisonment of from three months to one year.

Action may be taken against offenses provided for in this article without the authorization prescribed in Article 313 of the Penal Code.

#### ART. 2

The Minister for the Interior, in accord with the Ministers for Grace and Justice and for Foreign Affairs, is authorized to publish regulations for the prevention of transit or departure of persons intending to render service with the forces fighting in the territories indicated in Article 1.

For infractions of the above-mentioned regulations, penalties may be established of not more than 6 months' arrest and 300 lire fine.

<sup>3</sup> *Gazetta Ufficiale*, No. 43, Feb. 20, 1937, pp. 633-634.

## ART. 3

The present decree shall enter into force from the date which shall be determined by decree of the Minister for Grace and Justice and the Ministers for Foreign Affairs and for the Interior.

The present decree will be presented to Parliament for conversion into law.

IV. MINISTERIAL DECREE REGARDING THE ENTRY INTO FORCE OF THE DECREE-LAW ABOVE, FEBRUARY 19, 1937 <sup>4</sup>

## (Translation)

The Keeper of the seals, Minister for Grace and Justice in accord with the Ministers for Foreign Affairs and for the Interior,

In consideration of Article 3 of the Royal Decree-Law of February 15, 1937-XV, No. 102, containing provisions regarding the prohibition of the departure of volunteers for Spain;

## DECREE:

The Royal Decree-Law February 15, 1937-XV, No. 102, enters into force February 20, 1937-XV.

V. OFFICIAL COMMUNIQUÉ REGARDING PASSPORTS FOR SPAIN <sup>5</sup>

At approximately the same time as the issuance of the above Ministerial Decree, an official communiqué was issued by the Italian Government in the following terms:

"The public is warned that, in execution of the Royal Decree-Law of the fifteenth instant, published in number 43 of the *Official Gazette* of the Kingdom, which contains provisions prohibiting volunteer enlistments for Spain, the issue of passports for Spain, excepting for special justified reasons, has been forbidden, and the validity of passports already issued for the country in question before the entry into force of the aforesaid decree, has been suspended."

<sup>4</sup> *Ibid.*, p. 634.

<sup>5</sup> Communication from the American Embassy at Rome to the author.

## 16

## LATVIA

I. DECREE OF THE MINISTER OF INTERIOR PROHIBITING RECRUITMENT OF VOLUNTEERS AND UNAUTHORIZED DEPARTURE FOR SPAIN, FEBRUARY 23, 1937 <sup>1</sup>

## (Translation)

According to the law concerning the prohibition of Latvian citizens taking part in the Spanish Civil War accepted by the Cabinet of the Ministry, February 23, this year, it is provided as follows:

<sup>1</sup> *Valdības Vestnesis*, No. 43, Feb. 23, 1937.

1. It is prohibited:

(a) To open any recruiting offices in order to obtain recruits for the civil war in Spain;

(b) To solicit recruits, either directly or indirectly, by means of advertisements in the press or the wireless or in meetings, by house to house canvassing or by the circularizing of groups or of individuals, whether by post or otherwise;

(c) To offer gifts, payments or promises, or by the use of threats, or by the abuse of power or authority to compel enlistment.

2. The inhabitants of Latvia are forbidden to offer any service to the one or the other party of the forces fighting in the Spanish civil war or to take up such services.

The citizens of Latvia are warned not to enlist in any service and that such enlistment is illegal and that anyone doing so and returning to Latvia may become subject to the punishment provided by law.

3. It is provided that transit to Spain from or through Latvia is to be curtailed:

(a) All passports valid for travel to Spain are cancelled;

(b) All Latvian citizens who for especially important reasons desire to travel to Spain must obtain a special permission for this purpose of the Administrative Department of the Ministry of the Interior and their passport must be endorsed accordingly;

(c) Persons (other than of Spanish nationality) are forbidden to travel in transit to Spain if their passports have not been endorsed by the authorities who have issued the passport to the effect that they are allowed to proceed to Spain.

This Decree goes into effect on the day of its publication.

## II. DECREE OF THE MINISTER OF FINANCE REGARDING CONTROL OF VESSELS AND PERSONS DEPARTING FOR SPAIN, FEBRUARY 23, 1937<sup>2</sup>

### *(Translation)*

According to the Cabinet of the Ministry there has been accepted today a Decree concerning passengers departing for Spain, and this Order is hereby given to the customs and port authorities and to Latvian ship captains to strictly abide by the following:

1. It is forbidden to take on board of a vessel passengers bound for Spain whose passports have not the special permission mentioned in the passport that the holder of the passport has the right to depart for Spain;

2. It is forbidden to allow the departure from port of any vessel on which there are passengers embarked for Spain whose passports do not contain the special permit allowing them to go thence;

3. The masters of Latvian vessels must watch out that in Spanish ports

<sup>2</sup> *Valdības Vestnesis*, No. 43, Feb. 23, 1937.

passengers do not land whose passports do not contain the special permit allowing them to do so;

4. The masters of Latvian vessels must see to it that no member of the ship's crew shall leave the vessel in Spanish ports except in connection with the regular business of the voyage or of loading and unloading the vessel's cargo;

5. Masters must see to it that illegal passengers (stow-aways) do not board the vessels, and, for this purpose, they must co-operate with the police in the inspection of their vessel before departing for foreign ports.

Embraced within the term "vessels" as mentioned in this Decree are included all ships, boats and floating craft used for a marine purpose.

This Decree goes into effect the day of its publication.

### III. DECREE OF THE MINISTER OF COMMUNICATIONS FOR THE CURTAILMENT OF THE SALE OF TICKETS TO SPAIN, FEBRUARY 23, 1938<sup>3</sup>

#### (Translation)

In accordance with the Decree of the Cabinet of the Ministry of February 23rd of this year, it is forbidden travel bureaus, agencies, or any associations selling coupon ticket books for travelling to Spain, except to persons who can show that their passports contain the special permit allowing them to proceed to Spain, and also to foreign citizens, persons whose passports show the special permit that travel to Spain is allowed.

<sup>3</sup> *Valdibas Vestnesis*, No. 43, Feb. 23, 1937.

## 17

### LITHUANIA

#### I. LAW TO PROHIBIT PARTICIPATION IN THE SPANISH CIVIL WAR, APRIL 10, 1937<sup>1</sup>

##### 1

Lithuanian citizens are forbidden to participate in the Spanish Civil War.

It is also forbidden to recruit persons in Lithuania for the Spanish Civil War.

##### 2

Persons that have infringed the provisions of Article 1 of this Law shall be punished with imprisonment up to six months.

##### 3

This Law comes into force from the day of its promulgation.

<sup>1</sup> Translation furnished by the Lithuanian Government.

II. INSTRUCTION OF THE MINISTRY OF FOREIGN AFFAIRS REGARDING  
PASSPORTS FOR SPAIN, MARCH 12, 1937<sup>2</sup>

(Translation)

The Ministry of Foreign Affairs hereby authorizes the Legations and the Consulates when issuing foreign passports to indicate in the designated place that the passport is valid for all countries with the exception of Poland and Spain. It is necessary to warn every holder of a foreign passport that should he desire to go to Spain he should obtain permission from the Ministry of Internal Affairs in the form of a separate permit which he should safeguard for identification.

This restriction should also be made on foreign passports previously issued when the Legations or the Consulates have occasion to encounter them.

III. CIRCULAR OF THE DEPARTMENT OF ADMINISTRATION RELATING TO  
THE SAME, MARCH 13, 1937<sup>3</sup>

(Translation)

Having been authorized by the Minister for Internal Affairs I hereby notify that now when issuing a new passport or renewing an old passport or in giving out a visa it is necessary to indicate in a separate section of the passport that it is valid for travel in all countries with the exception of Poland and Spain (in French it would be "Pour tous les pays la Pologne et l'Espagne exceptées"). I also request that when giving out or prolonging passports for a citizen or giving out a visa that he be notified that if he desires to go to Spain he should get permission from the Minister of Internal Affairs in the form of a separate permit which he should safeguard as an identification.

<sup>2</sup> Circular No. 5396, supplied by the Government of Lithuania.

<sup>3</sup> Supplied by the Government of Lithuania.

## 18

## LUXEMBURG

I. LAW DESTINED TO PREVENT PARTICIPATION OF FOREIGNERS IN THE  
CIVIL WAR OF SPAIN, APRIL 10, 1937<sup>1</sup>

(Translation)

We Charlotte . . .

Our Council of State agreed;

With the assent of the Chamber of Deputies;

Considering the decision of the Chamber of Deputies of the date of April

<sup>1</sup> *Pasinomie: Recueil des Lois, Décrets, Arrêtes*, Anne 1937, Fascicule No. 1.

8, 1937, and that of the Council of State of the 9th of the same month, regarding which there is no cause for a second vote;

Have ordered and We Order:

ARTICLE 1. It is prohibited all Luxemburg nationals to take service in the armed forces in Spain or in the Spanish possessions including the Spanish zone of influence in Morocco.

ART. 2. The recruitment, under whatever form it may be, for the armed forces mentioned in Article 1, as well as all acts tending to enrollment in the said forces, are prohibited on Luxemburg territory.

ART. 3. It is prohibited any person, whether of Luxemburg nationality or foreigner, with the exception of persons of Spanish nationality, being in the territory of the Grand Duchy, to leave this territory for a destination in Spain or in the Spanish possessions including the Spanish zone of influence in Morocco for the ends mentioned in Article 1.

Passage in transit across Luxemburg territory is prohibited under the same conditions.

ART. 4. Without prejudice to the application of more severe penal laws, infractions of the provisions of the present law are punishable with imprisonment from 8 days to 6 months.

The first book of the Penal Code will be applicable with the exception of the provisions on attenuating circumstances.

ART. 5. The Government is authorized to take by means of general administrative regulations the measures necessary for preventing the departure and the transit of non-Spanish combatants for Spain, its possessions and its zones of influence.

Infractions of these regulations are punishable with the penalties provided for in Article 4.

ART. 6. The present law will enter into force the day of its publication in the *Memorial*.

## II. DECREE TO PUT INTO EFFECT THE LAW OF APRIL 10, 1937, FOR PREVENTING PARTICIPATION OF FOREIGNERS IN THE SPANISH CIVIL WAR, APRIL 17, 1937 <sup>2</sup>

(Translation)

We Charlotte . . .

In view of the law of April 14, 1934, concerning passports for foreigners, and that of April 10, 1937, for preventing participation of foreigners in the civil war of Spain;

In view of Article 27 of the law of January 16, 1866, on the organization of the Council of State, and considering that there is a matter of urgency;

On the report of Our Minister of State, President of the Government, and after deliberation of the Government in Council;

<sup>2</sup> French text furnished by the British Foreign Office through the courtesy of the Department of State, Washington.

We have decreed and We decree :

ARTICLE 1. Luxemburg passports and all certificates of travel delivered by the Department of Foreign Affairs and by diplomatic and consular agents of the Grand-Duchy abroad are valid for travel to Spain and the Spanish possessions, including the Spanish zone of influence in Morocco, only if their validity has been expressly extended to these territories.

The form of visa relative to the extension of the validity of passports and certificates of travel will be as follows:

“Valid equally for travel to Spain, Spanish possessions and the Spanish zones of influence in Morocco.”

This visa will be valid only for a single voyage and will indicate the duration of the validity.

ART. 2. The present decree will enter into force the day of its publication in the *Memorial*.

# 19

## THE NETHERLANDS

### I. LAW CONCERNING NATIONALITY, DECEMBER 12, 1892 <sup>1</sup>

ARTICLE 7. Dutch Nationality becomes forfeited: . . .

(4) by anyone who, without Our permission, enters into foreign state or military service; . . .

### II. LAW INVESTING THE CROWN WITH POWER TO TAKE MEASURES IN CONNECTION WITH THE HOSTILITIES IN SPAIN, APRIL 8, 1937 (See Appendix VII—The Netherlands, No. 5)

### III. DECREE TO PREVENT VOLUNTEERING WITH EITHER OF THE BELLIGERENT PARTIES IN SPAIN, JUNE 11, 1937 <sup>2</sup>

(Translation)

We Wilhelmina . . .

ARTICLE 1. In this Decree the term Spain is to be understood to include Spanish territory within and without Europe, and the Spanish zone of Morocco.

ART. 2. It is forbidden to perform any act either in contemplation of volunteering with one of the belligerents in Spain or whose aim is to promote volunteering with one of the belligerents in Spain.

<sup>1</sup> Flournoy and Hudson, *op. cit.*, pp. 440, 443.

<sup>2</sup> *Staatsblad* No. 163. *Nederlandsche Staatscourant*, No. 114, June 17, 1937. Note: Administrative measures were taken Feb. 20, 1937, by virtue of which passports for voyages to Spain were required to contain a special notation, which would be given only if the applicant could prove in a plausible manner that he would not engage with one of the parties in conflict in Spain. H. A. Helb, “Les Pays-Bas et la Non-Intervention,” *“Grotius” Annuaire International Pour* 1938, p. 24.

ART. 3. Our Minister of Justice and the authorities designated by him are authorized to indicate a stipulated place of abode and to remove thither foreigners as to whom, in connection with the circumstances under which they are residing in the Rijk in Europe, there is grave suspicion that the proscribed act set forth in Article 2 is to be performed, as well as those whose emigration from the Rijk in Europe the Netherland Government has by a particular agreement assumed the obligation to prevent.

The Ministers of Justice and of the Interior are to take measures for the carrying out of the authority granted in the first paragraph of this Article.

Our Ministers of Foreign Affairs, Justice, the Interior and Colonies are, each within his own sphere, charged with the execution of this decree, which is to be placed in the *Staatsblad*, the *Nederlandsche Staatscourant* and the corresponding publications in the Netherlands Indies, Surinam and Curaçao, and a copy of which is to be sent to the Council of State.

## 20

## NORWAY

I. LAW ESTABLISHING RULES PROHIBITING PARTICIPATION IN WAR IN FOREIGN COUNTRIES, MARCH 19, 1937<sup>1</sup>

(Translation)

We Haakon, . . .

Announce herewith that there has been laid before Us the decision of the Storthing of March 12, 1937, as follows:

## I. The King has Prohibited:

1. That anyone in this country shall enlist for foreign armed service for a country of which he is not a citizen, and of which he had not been a citizen lately.

2. That anyone shall travel from Norway to such a country to take part in war.

Disobedience of such a prohibition, or aid thereto, will be punishable with a fine or imprisonment up to three months.

II. The Department concerned may make the necessary arrangements to enforce or to administer the above-mentioned prohibition, as provided for in paragraph 1.

III. This law shall go into effect at once.

II. ROYAL RESOLUTION RELATING TO THE LAW OF THIS DATE ESTABLISHING RULES PROHIBITING PARTICIPATION IN WAR IN FOREIGN COUNTRIES<sup>2</sup>

(Translation)

It is herewith ordained:

1. It is prohibited in this country to enlist for war service for either of the parties in the civil war in Spain, or to travel from this country to Spain

<sup>1</sup> *Norsk Lovtidende*, No. 11, 1937, p. 310.

<sup>2</sup> *Ibid.*, p. 311.



or the Spanish Possessions—including Spanish Morocco—or to take part on either side in the Spanish civil war.

This prohibition shall not concern Spanish citizens who have had Spanish citizenship since July 17, 1936.

2. The Department of Justice is authorized to adopt those measures mentioned in paragraph 11 of this law.

3. These rules shall go into force at once.

### III. RULES TO PREVENT PARTICIPATION IN THE CIVIL WAR IN SPAIN, MARCH 19, 1937<sup>3</sup>

To the Chief of Police.

*Regulations to prevent participation in the Civil War in Spain.*

You are hereby informed as follows:

A Royal Decree dated March 19, 1937, based on the Law of March 12, 1937, stipulates:

1. It is prohibited to enlist in this Country for service with either of the two parties in the Spanish Civil War, or to leave this country for Spain or Spanish possessions—including Spanish Morocco—with the intention of taking part on either side in the Spanish Civil War.

This prohibition does not apply to Spanish citizens who have been Spanish citizens since July 17, 1936.

2. The Ministry of Justice are authorized to take the measures indicated in Article 2 of the said law.

3. These stipulations are put in force immediately.

### IV. IN VIRTUE HEREOF THE MINISTRY OF JUSTICE HAVE ISSUED THE FOLLOWING RULES TO PREVENT PARTICIPATION IN THE CIVIL WAR IN SPAIN

#### I

Norwegian subjects, or aliens who were not Spanish citizens before July 17, 1936, must not leave this country for Spain or Spanish possessions, including Spanish Morocco, unless they have obtained a special permission to do so.

#### 2

Permission to leave for the said territories is given by the Ministry of Justice by a special endorsement on the passport or identity card of the person concerned.

Application for permission as stated above shall be addressed to the Ministry of Justice and forwarded through the competent Chief of Police, and the application shall contain all necessary information.

The Chiefs of Police are authorized to endorse the passport or identity paper of a sailor, duly signed on a ship calling at Spanish ports, if in each particular case this is considered not to involve any risk of abuse.

<sup>3</sup> *Avskrift*, No. 6. Supplied by the Government of Norway.

## 3

Norwegian passports or identity-cards for travelling abroad, which are issued or renewed hereafter, shall be marked "*not valid for Spain, Spanish possessions, Spanish Morocco.*"

In cases where a passport already issued, or an identity card for travelling abroad, is presented to the Police Authorities, which is still valid, the passport or identity card shall be marked as stipulated above.

## 4

Travel Bureaux and similar establishments must not issue tickets for Spain or Spanish possessions, including Spanish Morocco, to persons who have not obtained the permission mentioned in Section 2 above.

## 5

Masters of Norwegian ships or airplanes must not convey passengers to or land passengers in the territories mentioned above, unless the passengers have obtained the permission mentioned in Section 2.

At the request of the Police, passengers' lists must be produced for approval.

## 6

Infractions of Sections 1, 4 and 5 of these Rules are punished by fines or imprisonment not exceeding 3 months.

Admission to the country shall be refused to Aliens arriving in Norway with the intention of proceeding to Spain, unless they have obtained the necessary permission from the authorities of their own countries, or who are citizens of Spain since July 17, 1936.

Ships' or Airplanes' passenger lists shall, until further notice, be inspected only when the Police consider that some special reason renders this desirable.

## 21

## POLAND

I. NATIONALITY LAW OF JANUARY 20, 1920<sup>1</sup>

ARTICLE 11. Polish citizenship shall be lost: (1) By acquiring foreign citizenship. (2) By accepting a public office or entry into the military service of a foreign state without the permission of the Polish Government.

<sup>1</sup> Flournoy and Hudson, *op. cit.*, p. 481. Article 6 of the Order of June 7, 1920, issued by the Minister of Interior for the enforcement of the above law, provides for loss of citizenship under such circumstances if the person acts "without the permission of the Council of Ministers of the Polish State." *Ibid.*, p. 483.

## II. OFFICIAL NOTICE REGARDING ENLISTMENT FOR SPAIN, DECEMBER 11, 1936<sup>2</sup>

(Translation)

The authorities concerned herewith remind citizens desirous of joining any of the forces fighting on either side in Spain—as well as those who have already joined—that in accordance with Article 11 of the Regulations of January 20, 1920, regarding Polish Citizenship (*Ustawa Rep. Polski*, January 30, 1920, No. 7, line 44), serving in the army of other countries without the permission of the Polish Government will result in loss of Polish citizenship.

<sup>2</sup> *Monitor Polski*, No. 288, Dec. 11, 1936, p. 2.

### 22

## PORTUGAL

### I. DECREE FOR THE PURPOSE OF PROHIBITING AND PUNISHING ENLISTMENT, RECRUITING, AND PROPAGANDA IN FAVOR OF ANY ONE OF THE SPANISH FORCES IN CONFLICT, FEBRUARY 20, 1937<sup>1</sup>

(Translation)

ARTICLE 1. It is formally forbidden to Portuguese citizens to enlist in any one of the armed Spanish forces in conflict, as well as to carry on recruiting in their behalf or to carry on propaganda, by any means whatever, with the direct object of provoking enlistment or recruitment.

ART. 2. Those persons will be considered as infringing the provision of Article 1 who, after the publication of this decree-law, leave the national territory to participate in the hostilities in Spain, and those who provoke or effect recruitment, or make propaganda with a view to securing recruitment or enlistment of Portuguese citizens or of foreigners. The former will lose their citizenship, the latter will be punished in accordance with the terms of Article 156 of the Penal Code.

ART. 3. Portuguese citizens who are now enlisted in any one of the said armed Spanish forces must return to Portugal within one month from the publication of this document, and they must immediately notify the town hall in their place of birth or of residence.

ART. 4. Foreigners residing in Portugal, who enlist in any one of the armed Spanish forces will be banished from Portuguese territory for a period of five years from the date of their infraction. Those who carry on propaganda or provoke recruitment will come within the scope of Section 1 of Article 156 of the Penal Code.

SECTION 1. The provision of the second part of that article is appli-

<sup>1</sup> *Colecção de Legislação Portuguesa de 1937*, p. 42; also in Portugal, *Bulletin de Renseignements Politiques, Economiques et Littéraires* (Lisbon), No. 22, Feb. 28, 1937, p. 5.

cable to foreigners who cross Portugal with the object of getting to Spain in order to join the forces in conflict.

ART. 5. Individuals of Spanish nationality who work for recruitment or enlistment of their nationals are not considered as offenders.

SECTION 1. Signs or notices, published by consular authorities for the purpose of urging Spanish citizens to fulfill their military duties, are not considered as a form of the said propaganda.

ART. 6. The Government will take such measures as are considered necessary for the execution of this document.

ART. 7. This decree goes into force immediately and will be applied in conformity with the terms of Article 3 of the Decree No. 26.935 of August 27, 1936.<sup>2</sup>

<sup>2</sup> Herewith is the tenor of Article 156 of the Penal Code and of paragraph 1 to which the above document refers:

"Every person who, without the authorization of the Government, recruits or causes to recruit, gives, or causes the giving of a salary to individuals for the benefit of foreign military or maritime service, or those who procure for the same ends, arms, boats or munitions, will be sentenced to the maximum prison term for misdemeanors as well as to the maximum fine.

"Section 1. If the offender is a foreigner, he will be expelled from the kingdom for three years."

Art. 3 of the decree 26.935, of Aug. 27, 1936, is revised as follows:

"Entrance into application of the present decree is immediate and this decree will be observed as long as the prohibition to which Article 1 refers is effectively applied by the German, British, French, Italian and Russian Governments in their respective territories."

## 23

### ROUMANIA

#### I. NATIONALITY LAW OF FEBRUARY 23, 1924<sup>1</sup>

ARTICLE 36. Roumanian nationality is lost: . . . (d) By acceptance of a public function from a foreign government without the authorization of the Roumanian Government. . . . (g) In the case stated in Article 37.

ART. 37. A Roumanian who enters the military service of a foreign country or affiliates himself with a foreign military organization without the authorization of his government shall lose his status as a Roumanian.

He cannot recover his status as a Roumanian except as provided in Article 7. [Naturalization process.—Ed.]

#### II. CIRCULAR OF THE MINISTRY OF THE INTERIOR TO DISTRICT PREFECTS, No. 14326, DECEMBER 31, 1936<sup>2</sup>

##### (Translation)

The Ministry of Foreign Affairs informs us by circular No. 69879/936 that the Roumanian Government has adhered to the proposals of the Com-

<sup>1</sup> Flournoy and Hudson, *op. cit.*, pp. 501-502.

<sup>2</sup> Supplied by the Roumanian Government.

mittee on Non-Intervention in Spanish affairs relative to the extension of the accord of indirect non-intervention, aiming at the prevention of recruiting, departure or transit of persons intending to take part in the Civil War in Spain.

It also draws attention to the fact that, by its adherence, the Roumanian Government obligates itself to inform the London Committee as early as possible concerning the legal measures it can take at present in view of the objects stated above as well as to prevent in the future any technical or financial aid being placed at the disposal of either of the parties to the conflict in Spain.

In communicating to you the above information, and in accordance with the request of the said Department, we have the honor to inform you that any act or journey out of the country which may contravene such an understanding signed by the Roumanian State is forbidden.

We therefore request you to take measures, through the agencies under your jurisdiction, for putting these provisions into effect.

### III. CIRCULAR OF THE MINISTRY OF FOREIGN AFFAIRS, DEPARTMENT OF ADMINISTRATIVE AND CONSULAR AFFAIRS, NO. 61627<sup>3</sup>

(*Translation*)

I have the honor to inform you that this Department, putting into effect the proposals of the Non-Intervention Committee, has decided that travel permits issued by our authorities are not valid for Spain except when bearing a special visa authorizing travel to that country in limited cases enumerated in the above-cited proposals, namely: for diplomats and consuls, journalists, persons taking part in humanitarian work in Spain, and those who have proven interests in Spain.

This visa shall be granted at home by this Department, and abroad by our Legations and Consulates.

You will at the same time be good enough to communicate to me the names of persons who shall obtain from that office a visa for Spain in conformity with the provisions of this circular.

<sup>3</sup> Supplied by the Roumanian Government. Date not specified. (Apparently *circa* Feb. 19, 1937.Ed.)

## 24

### SWEDEN

#### I. CIRCULAR TO DISTRICT OFFICIALS REGARDING PASSPORTS TO SPAIN AND SO FORTH, FEBRUARY 26, 1937<sup>1</sup>

(*Translation*)

Gustav, . . . With Reference to the Conditions in Spain,  
His Royal Majesty Decrees that it be enforced from on and after February 27, 1937, that:

<sup>1</sup> *Svensk Forfattningssamling*, No. 57, 1937, p. 159.

Without permission from the Minister of Foreign Affairs no passport for travel to Spain, the Spanish Possessions, or the Spanish Zone in Morocco, may be issued, neither can passports already issued be valid for such travel.

## II. LAW REGARDING MEASURES TO PROHIBIT VOLUNTEERS PARTICIPATING IN THE CIVIL WAR IN SPAIN, MARCH 5, 1937<sup>2</sup>

(*Translation*)

We Gustav, . . . have decreed as follows:

§ 1. Swedish citizens enlisting for war service in Spain shall be punished with imprisonment not exceeding six months or fined.

§ 2. If anyone tries by gift, payment, or promise of remuneration, or in other similar ways, or by coercion, or misuse of authority to urge any person to enlist for war service in Spain, he shall be punished with imprisonment up to six months or fined.

§ 3. Tickets good for travel to or through Spain may be sold only to a person who has received special permission from the King, or from the authorities authorized by the King, to proceed to Spain; or to foreigners who are citizens of a state recognized by the King and who can show that they have obtained permission to travel to Spain from the authorities of that state. If anyone disobeys what is thus decreed, he shall be punished by a fine or by imprisonment not exceeding six months.

§ 4. In cases of a Swedish vessel proceeding to Spain, the master must: see to it that the ship does not carry passengers with Spain as their destination who do not have the permission mentioned in paragraph 3,

see to it, without prejudice to the rulings in paragraph 51 of the Seamen's Law, and paragraph 10 of the Law Regulating Hours of Work at Sea, that members of the crew are prohibited to go ashore in Spain unless the service so requires,

also see to it that anybody else accompanying the vessel shall not go ashore in Spain unless he has the permission mentioned in paragraph 3 above.

If the master should disregard the provisions of this paragraph he shall be fined.

§ 5. With reference to Swedish vessels calling at Spain, the King is at liberty to prescribe

that the vessel must call at certain ports during the voyage to embark or disembark specially appointed controlling officers,

that such controlling officer is entitled to be aboard the vessel, and, in accordance with what is further provided, control the cargo and passengers, also

that the master must allow examination by warships of states that have been recognized by the King to ascertain whether a controlling officer is on board.

<sup>2</sup> *Svensk Forfattningssamling*, No. 61, 1937, p. 167.

If the master should disregard the provisions of this section, he shall be punished with a fine.

§ 6. The provisions of this law apply not only to Spain, but also to the Spanish Possessions and the Spanish Zone in Morocco.

§ 7. Transgressions of the provisions of section 1 which take place outside of this country may, independently of what is provided in Chapter One, paragraph I of the Criminal Law, be brought to trial in the courts of this country, and trials in such cases shall be brought before the city court of Stockholm.

The legal court for cases referring to violations of the provisions mentioned in sections 4 and 5 shall correspondingly apply what is mentioned in paragraph 89 of the Seamen's Law.

To bring before a court of law other violations of this law than what are provided above, there shall apply what is provided for in criminal cases in general.

#### ACTION SHALL BE BROUGHT BY THE PUBLIC PROSECUTOR

§ 8. Fines levied in accordance with this law shall go to the Crown.

If there are insufficient means for paying the fines, the fines may be commuted in accordance with the general criminal law.

§ 9. The King may give further information referring to the application of this law.

This law shall go into force the day on which the King so orders and be in force up to and including February 28, 1938, or up to the earlier date provided for by the King. Rulings given by the King in accordance with this law will not be enforced longer than this law is in force. Violations made during the time the law was in force may be prosecuted even after the enforcement of the law has been suspended.

#### III. ROYAL PROCLAMATION PUTTING INTO FORCE THE LAW OF MARCH 5, 1937, SAME DATE <sup>3</sup>

*(Translation)*

His Royal Majesty has found it good to decree that the law of this date referring to Measures to Prohibit Volunteers Participating in the Civil War in Spain shall be put into force on March 7, 1937.

#### IV. ROYAL PROCLAMATION CONTAINING SPECIAL RULES WITH REGARD TO THE LAW OF MARCH 5, 1937, SAME DATE <sup>4</sup>

*(Translation)*

His Royal Majesty, who this day has issued a law referring to Measures to Prohibit Volunteers Participating in the Civil War in Spain, has found it good to decree as follows:

<sup>3</sup> *Ibid.*, No. 62, 1937, p. 169.

<sup>4</sup> *Ibid.*, No. 63, 1937, p. 169.

§ 1. Permission to travel to Spain will be given in addition to the King, by the Minister of Foreign Affairs, or the person whom he authorizes.

The validity of permission granted by foreign authorities will be provided for in section 4.

§ 2. Permission according to section 1, may, when it is not a question of a Spanish citizen, be given only to a person who can show a valid reason for desiring to enter Spain, and who obviously cannot be expected to participate in the civil war there.

When permission is given, notification shall be made upon the passport or upon other identification papers.

§ 3. Passports may not be issued for travel to Spain, and passports already issued shall not be valid, if the permission mentioned in section 1 has not been given.

When passports issued before February 27, 1937, are presented to the passport authorities it shall be written in the passport that it is not valid for travel to Spain without the above-mentioned special permission.

§ 4. Permission to travel to Spain, given to foreign citizens by an authority in his own country, shall have the same validity as permission given according to section 1, if the foreigner is a citizen of one of the states that have agreed to participate in the non-intervention in Spain, namely: Albania, Belgium, Bulgaria, Denmark, Estonia, Finland, France, Greece, Irish Free State, Italy, Yugoslavia, Latvia, Lithuania, Luxemburg, The Netherlands, Norway, Poland, Portugal, Roumania, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, Czechoslovakia, Turkey, Germany, Hungary and Austria.

Certificate that the foreign authority which has given the above-mentioned permission is authorized to do so may be given by an officer of the Department of Foreign Affairs, or by a Swedish legation, a paid Swedish consular officer, also upon the authorization of the Minister of Foreign Affairs, by an unpaid Swedish consular officer.

§ 5. If a vessel departs from Swedish customs territory for a call at Spain, it is the duty of the master to hand over to the customs authorities of the place where the vessel is cleared, a list of the passengers having Spain as their destination, or if such passengers are not on board, a written notification to this effect. When he turns in such a list, the passengers' passports and other identification papers must be shown. Before lists mentioned in the first part of the paragraph have been received and examined by the customs authorities, no clearance shall be given. If it is found at the examination that the vessel intends to carry to Spain passengers who have not obtained the permission mentioned in sections 1 and 4, the vessel may not be given clearance so long as these passengers remain on board.

If the master against his better judgment or by carelessness gives wrong information in the last case, or in the notification mentioned in the first part of this section, he shall be punished with a fine.

§ 6. Violations of the third part of section 5 shall be brought before



the court which has jurisdiction according to paragraph 16 of the Law Relating to Customs Violations, at the place where the violation takes place. Action shall be brought by the General Prosecutor of the Customs Administration.

Fines levied for such violations shall go to the crown. Lack of means for payment of the fine may be commuted in accordance with the criminal law.

§ 7. The provisions of this Proclamation regarding Spain shall apply to the Spanish Possessions and to the Spanish Zone of Morocco.

This Proclamation shall go into effect March 7, 1937, and will be in force forthwith, but not longer than to and including February 28, 1938. By this Proclamation, the circular of February 26, 1937 (No. 57), referring to passports for Spain, etc., is made invalid. Violation made during the time that this Proclamation is in force may also be punished even after the Proclamation has ceased to be in effect.

## 25

## TURKEY

I. NATIONALITY LAW OF MAY 28, 1928<sup>1</sup>

ARTICLE 9. Turks who adopt foreign citizenship of their own accord without obtaining a special permit or those who voluntarily perform military service in the army of a foreign country may be deprived of their citizenship by decision of the Council of Ministers.

ART. 10. Turks who, having entered a non-military service of a foreign state, fail to leave this service within a period to be determined if so ordered by the local authorities or by Turkish embassies and consulates abroad, and those who continue to serve without authorization a state at war with Turkey are liable to be deprived of their Turkish citizenship.

II. DECREE NO. 2/6064, PROHIBITING THE RECRUITMENT AND THE SENDING OF VOLUNTEERS INTO SPAIN, FEBRUARY 20, 1937<sup>2</sup>*(Translation)*

The Council of Ministers in its meeting of February 20, 1937, recognizing the need of putting into application the decisions reached by the Committee of Control of Non-Intervention in the Affairs of Spain, of which we are a member, consisting in the adoption of new measures of a legislative and administrative order designed to prevent all sending of volunteers into Spain, where the revolution which is flourishing endangers the peace of the

<sup>1</sup> Flournoy and Hudson, *op. cit.*, p. 571.

<sup>2</sup> *Recueil des lois, décrets et règlements de la République de Turquie (Traduction française)*, Tome XV, Fascicule No. 11, 1937, p. 334. The same will be found in the Turkish in the *T. C. Resmi Gazete*, March 9, 1937, p. 7791.

world, measures which, moreover, are found to have been preconized by our laws which prohibit any citizens from entering the service of a foreign army and from recruiting soldiers in Turkey, approves and decrees the putting into application and the publication of the particulars reproduced below, proposed by the Ministry of Foreign Affairs in its note No. 3931/142, of February 20, 1937.

1. It is prohibited our citizens to take part in any action designed to aid one or the other of the parties which are at war in Spain. It is likewise forbidden all persons, native or foreign, to recruit soldiers in Turkey for that end.

2. The provisions of our laws in force will be applied with respect to every person who acts counter to this prohibition.

3. These provisions must be published in the Official Journal for the information of the public.

4. Precautionary measures must be taken to this effect by the police authorities.

5. The above will be communicated to the other Powers and to the Committee of Control of Non-Intervention in the affairs of Spain.

## 26

## UNION OF SOVIET SOCIALIST REPUBLICS

DECREE OF THE COUNCIL OF PEOPLE'S COMMISSARS REGARDING THE PROHIBITION OF ENTRANCE AND RECRUITING OF VOLUNTEERS INTO SPAIN, FEBRUARY 20, 1937<sup>1</sup>

*(Translation)*

The Council of People's Commissars of the Union of Soviet Socialist Republics decrees:

1. Citizens of the U.S.S.R. are forbidden entrance into Spain to participate in the military activities under way in Spain.

2. Recruiting of persons for participation in the military activities in Spain, regardless of the means used for this recruiting, is forbidden in the territory of the U.S.S.R. under penalty imposed by criminal law.

3. Entrance into Spain is permitted only to those citizens of the U.S.S.R. who show that they are travelling there for purposes not in violation of points 1 and 2 of this decree. In this case it must be clearly indicated in the foreign passports that their holders are permitted entrance into Spain. Passports not bearing such statements are to be regarded as not valid for travel into Spain.

4. The prohibition of sale by all organizations concerned of tickets for travel into Spain to persons whose passports do not bear a notation authorizing travel into Spain.

<sup>1</sup> Supplied by the Soviet Government.

5. The prohibition of transit through the territory of the U.S.S.R. into Spain of persons who are citizens of a state which is party to the non-intervention agreement, with the exception of persons whose passports are stamped with the proper notation of the national authorities concerning permission for the holder of the passport to enter Spain.

6. The prohibition of acceptance on board a ship navigating under the flag of the U.S.S.R. and sailing for Spain, or calling at any Spanish ports of passengers travelling to Spain but whose passports do not bear a notation permitting them to travel to Spain.

7. The prohibition of departure from ports of the U.S.S.R. of ships navigating under the flag of any state which is party to the non-intervention agreement, and sailing for Spanish ports, if there are on board passengers travelling to Spain but not having noted in their passports permission for travel into Spain.

8. That captains of all vessels navigating under the flag of the U.S.S.R. may permit the landing in Spanish ports of those passengers only whose passports bear a notation permitting them to travel into Spain.

9. That in the event of a visit to Spanish ports by warships of the U.S.S.R., the commanders of these ships are vested with the responsibility of permitting shore landing only to members of the commanding staff and to the crew within the strict confines necessary to guarantee normal navigation.

## 27

## YUGOSLAVIA

I. CITIZENSHIP LAW OF SEPTEMBER 21, 1928<sup>1</sup>*(Translation)*

SECTION 32. Citizens who without permission from the appropriate authorities enter the military or civil service of a foreign state and remain there even after notification by the Ministry of the Interior that they should resign and leave shall lose their citizenship.

The Minister for the Interior shall publish all such notifications in the Official Gazette twice in the period of two months. If during the period of the following two months the interested parties do not reply, the Minister for the Interior shall issue a Decree of lost citizenship.

The Decree shall be published in the Official Gazette.

Loss of citizenship does not relieve the interested party of the consequences of non-compliance with military service.

<sup>1</sup> Supplied by the Yugoslavian Government.

II. LAW CONCERNING THE ORGANIZATION OF THE ARMY AND NAVY <sup>2</sup>

(Translation)

(Amended and corrected by the Law of September 30, 1931)

## SECTION 45

(6) All persons mentioned in this section of the Law, and our citizens, who voluntarily join the army of a foreign state, in which they are permanently or temporarily living or emigrated, and who do so without permission of the President of the Council of Ministers, shall *ipso facto* lose their citizenship upon proof of the fact by our military or civil representatives in such a state.

III. ORDER CONCERNING THE PROHIBITION OF THE DEPARTURE OF VOLUNTEERS FOR SPAIN, MARCH 3, 1937 <sup>3</sup>

(Translation)

By authority of Sections 65 to 71 of the Law for Internal Administration and the Decree of the Council of Ministers No. 98 of February 25, 1937, I hereby issue the following Order:

1. All enlistment of volunteers for Spain by individual persons as well as by separate offices or organizations for the recruiting of volunteers, and the inducement of individuals to enlist as volunteers for Spain, whether directly or indirectly; publication of appeals in that respect in the press or over the radio, by the distribution of circulars, through public meetings, lectures and the like, is prohibited over the entire State.

2. Departure of volunteers from our State for Spain is prohibited.

3. Collection of funds and other contribution for either warring side in Spain is prohibited.

4. Passports and visas for Spain are discontinued, temporarily; passports may be issued for Spain only for legitimate purposes and only upon prior approval of the Ministry of the Interior.

5. Anyone acting in contravention of this Decree shall be fined from 10 to 1500 dinars and on non-payment of the fine within the prescribed period shall be imprisoned for from one to thirty days.

6. Punishments for violations of this order are entrusted to the state police authorities. Upon proof that the violations are of a greater degree action shall be taken under Section 45 of the Law of Organization of the Army and Navy and Section 32, Law of Citizenship.

7. This order is to take effect upon the day of its publication in the Official Gazette.

<sup>2</sup> Supplied by the Yugoslavian Government.

<sup>3</sup> I. No. 3992, March 3, 1937. Supplied by the Yugoslavian Government.

## B

## SWITZERLAND

I. ORDER OF THE FEDERAL COUNCIL PROHIBITING PARTICIPATION IN THE HOSTILITIES IN SPAIN, AUGUST 14, 1936 <sup>1</sup>*(Translation)*

The Swiss Federal Council, in consideration of Article 102, Nos. 8 and 9, of the Constitution, orders:

ARTICLE 1. It is forbidden to leave Switzerland for the purpose of participating in the hostilities in Spain. The present prohibition does not apply to Spanish *ressortissants*.

Police officers and employees of the Confederation and of the Cantons are bound to prevent all departure with the above-mentioned design.

Article 94 of the Military Penal Code is reserved.

ART. 2. The hostilities in Spain may not be supported nor assisted in any way on Swiss territory.

The General Administration of Posts and Telegraphs is requested not to accept or send any parcel of money whose object would be to support or favor the said hostilities.

Article 41 of the Federal Penal Code is reserved.

ART. 3. The present order enters into force August 14, 1936.

II. ORDER OF THE FEDERAL COUNCIL INSTITUTING MEASURES TO ENFORCE THE PROHIBITION AGAINST PARTICIPATION IN THE HOSTILITIES IN SPAIN, AUGUST 25, 1936 <sup>2</sup>*(Translation)*

The Swiss Federal Council, in consideration of Article 102, Nos. 8, 9 and 10, of the Constitution, orders:

ARTICLE 1. Whoever leaves Switzerland to take part in the hostilities in Spain, or takes steps to that effect, whoever, in any way, supports or assists on Swiss territory the hostilities in Spain, whoever, in particular, provides or makes collections for other purposes than charity, whoever provokes or publicly incites to infraction of the present order, will be punished by imprisonment of not more than six months or a fine of not more than ten thousand francs, or both.

ART. 2. The general provisions, as well as Articles 69-72 of the Federal Penal Code of February 4, 1853, are applicable.

The Federal Penal Court is charged with judging infractions of the present order.

<sup>1</sup> *Recueil officiel des lois et ordonnances de la Confédération Suisse*, tome LII, 1936, p. 662.

<sup>2</sup> *Ibid.*, p. 669.

The Federal Department of Justice and Police may delegate instruction and judgment to the Cantonal authorities.

ART. 3. Sums of money collected for the purpose of supporting the hostilities in Spain will be confiscated.

ART. 4. Printed matter (pamphlets, fliers, notices, etc.) which provoke or incite the committing of an infraction against the present order will be sequestered by the police. It will be the part of the Attorney General of the Confederation to propose its confiscation to the Federal Council.

ART. 5. Organized demonstrations in favor of one or the other of the conflicting parties in Spain, in particular meetings or parades, may not be held without prior authorization from the competent Cantonal authority.

These demonstrations shall be forbidden when there is reason to suppose that they will be an occasion for provoking or inciting to infraction of the present order.

Demonstrations may be dissolved on the same conditions.

When necessary, the Federal Council will itself pronounce the prohibition.

ART. 6. The present order enters into force August 26, 1936.

## APPENDIX VI

### RESOLUTION RELATING TO THE SCHEME OF OBSERVATION OF THE SPANISH FRONTIERS BY LAND AND SEA, ADOPTED BY THE INTERNATIONAL NON-INTER- VENTION COMMITTEE, MARCH 8, 1937<sup>1</sup>

The Governments represented on the International Committee for the application of the Agreement regarding Non-Intervention in Spain having approved the resolution passed on the 16th February, 1937, by the Committee to the effect that the Agreement should be extended as from midnight the 20th-21st February, 1937, to cover the recruitment in, the transit through, or the departure from, their respective countries of persons of non-Spanish nationality proposing to proceed to Spain, Spanish Possessions or the Spanish Zone of Morocco for the purpose of taking part in the present conflict; and

2. Having deemed it expedient to establish a system of observation round the frontiers of Spain, the Spanish Possessions and the Spanish Zone of Morocco for the purpose of ascertaining whether the Agreement is being observed; and

3. His Majesty's Government in the United Kingdom having accepted an invitation by the Portuguese Government to observe the carrying out of the Agreement in Portugal, and for this purpose to appoint British observers to be attached to His Majesty's Embassy in Lisbon; and

4. His Majesty's Government in the United Kingdom having informed the Committee that they are satisfied that the agreement reached between them and the Portuguese Government as a result of this invitation is fully adequate from every point of view to enable His Majesty's Government to discharge the responsibilities which they have agreed to assume, and that they will communicate to the International Committee any information which may be reported to them by His Majesty's Ambassador at Lisbon regarding infringements of the Non-Intervention Agreement; and

5. The Committee being fully confident in the discharge by His Majesty's Government in the United Kingdom of these responsibilities in regard to the Portuguese frontiers, in collaboration with the Portuguese Government, agrees on behalf of the Governments represented thereon, that the system of observation on the Franco-Spanish frontier, the frontier between Spain and Gibraltar, and the maritime frontiers of Spain, the Spanish Possessions, and the Spanish Zone in Morocco, shall be carried out in the manner indicated in the Annex attached hereto unless otherwise amended or determined.

<sup>1</sup> *British Parliamentary Paper, Spain No. 1 (1937), Cmd. 5399.*

## ANNEX

## I. THE ORGANIZATION OF THE SYSTEM OF OBSERVATION

*Establishment of the "International Board for Non-Intervention in Spain"*

1. The system of observation will be administered on behalf of the participating Governments by a Board to be known as the "International Board for Non-Intervention in Spain," and hereinafter referred to as the Board, consisting of a Chairman, to be appointed by the International Committee, and of five members nominated by the Representatives of the Governments of the United Kingdom, France, Germany, Italy and the U.S.S.R.

*The Functions of the Board*

2. The Board will have power to decide all questions relating to the administration of the scheme, but it will be the duty of the Board to submit all matters raising questions of principle to the International Committee for decision by that body on behalf of the participating Governments.

## II. THE ESTABLISHMENT OF A SYSTEM OF OBSERVATION ON THE SPANISH LAND FRONTIERS

*The Establishment of Observation on the Spanish Land Frontiers*

3. In view of the fact that a special arrangement has been reached between the United Kingdom and Portuguese Governments, as referred to in paragraphs 3 and 4 of the foregoing Resolution, regarding the Portuguese frontiers, there shall be stationed on the French side of the Franco-Spanish frontier and on the British side of the Gibraltar-Spanish frontier an international staff charged with the observation of the enforcement of the Non-Intervention Agreement.

*The Régime to be Established on the Frontiers*

4. For the purposes of the scheme, the Franco-Spanish frontier will be divided into zones, each of which will be in the charge of an "Administrator" who will be responsible for the system of observation to be established in that zone to the "Chief Administrator" who will be responsible for the whole frontier. Part of the international staff will be stationed at railway and road crossings over the frontier, and part will be equipped on a mobile basis. These officials will work in close collaboration with the appropriate French authorities. As there is only one crossing from Gibraltar into Spain, the necessary observation will be carried out by one "Administrator" with a small staff of subordinate rank.

*The Facilities to be Accorded To, and the Duties Of, Administrators under the Land Observation Scheme*

5. The facilities to be accorded to, and the duties of, the Administrators have been defined as follows:



- (1) The Chief Administrator, Administrators, and their subordinates shall enjoy the immunities normally accorded to diplomatic officers, and the Chief Administrator shall have the right of free communication with the Board. Further, the Chief Administrator and the Administrators and their subordinates shall be granted by the Governments of the countries concerned full facilities to enable them to exercise the rights and to discharge the duties assigned to them, and, in particular, those rights and duties enumerated in Sections (2) and (3), below.
- (2) These facilities will include—
  - (a) the right of free entry at any time into railway establishments, and similar premises;
  - (b) the right, in accordance with (3) below, of making such inspections as they may think proper in the premises referred to in (a) above, for the purpose of establishing whether any arms or war material are being exported into Spain or whether foreign nationals are entering that country for the purpose of taking service in the present conflict, in contravention of the Agreement for Non-Intervention;
  - (c) the right (i) to call upon the responsible authorities for documents relating to the nature of particular consignments of goods, and (ii) to examine the passports of persons proceeding to Spain;
  - (d) the grant of the same priority for telephone and telegraph services as are accorded to diplomatic officers stationed in, or national officials of, the country in question.
- (3) It will be the duty of the Chief Administrator in France and of the Administrator at Gibraltar—
  - (a) when called upon by the Board, to investigate, and to report on, any particular case in respect of which a complaint has been submitted to the Committee by the Representative of a Government which is a party to the Non-Intervention Agreement;
  - (b) whenever, as the result of investigations carried out by the international staff, on their own initiative, he has satisfied himself that a consignment of arms or war material (including aircraft) has been exported into Spain or that foreign nationals have entered Spain for the purpose of taking service in the present conflict, in contravention of the Agreement, to submit forthwith identical reports in regard thereto—
    - (i) to the Board;
    - (ii) to an official nominated for the purpose by the Government of the country in which he is stationed.
- (4) In addition to the rights and duties set out above, the Chief Administrator in France and the Administrator in Gibraltar will

have the right at all times to communicate direct with the Board on any matter connected with the discharge of their duties.

### III. THE ESTABLISHMENT OF A SYSTEM OF OBSERVATION OF SHIPS HAVING THE RIGHT TO FLY THE FLAGS OF THE PARTICIPATING COUNTRIES, PROCEEDING TO THE PORTS OF SPAIN OR THE SPANISH DEPENDENCIES

#### *The General Character of the Scheme for Sea Observation*

6. All ships having the right to fly the flags of the countries which are parties to the Non-Intervention Agreement (other than naval vessels) proceeding to Spain or to one of the Spanish Possessions, or to the Spanish Zone in Morocco, will—

- (a) subject to such exceptions as are set out in the following paragraphs in this chapter, embark at one of the ports specified in paragraph 12 below two or more "Observing Officers" appointed by the International Committee whose duty it will be to observe the unloading of the ship in Spanish ports, or
- (b) at the discretion of the Administrator or Deputy Administrator in charge of the Observation Port in question, embark one Observing Officer in the case of small ships, ships carrying cargo in bulk, or ships in ballast,

the Governments concerned taking such steps as are necessary to require the owners and masters of ships having the right to fly their respective flags to comply with the provisions set out in the following paragraphs.

#### *The Duties of the Chief Administrator*

7. The general organisation of the system of observation described in paragraph 6 above will be entrusted to a "Chief Administrator." It will be the duty of the Chief Administrator to determine the allocation of the "Observing Officers" as between one Observation Port and another in the light of the day to day requirements of each port. Subject to the general direction of the Board, the Chief Administrator will be responsible for all questions relating to the discipline and posting of the international staff employed at the Observation Ports.

#### *The Duties of the Administrators and Deputy Administrators*

8. At each of the Observation Ports enumerated in paragraph 12 below, an "Administrator" or "Deputy Administrator" will, subject to the general direction of the Chief Administrator referred to in paragraph 7 above, be responsible for the organisation of the observation scheme in that port, and in particular for arranging for the embarkation of Observing Officers on, and their disembarkation from, ships having the right to fly the flags of the countries which are parties to the Non-Intervention Agreement, proceeding to Spanish ports that have called at the Observation Port in question for the purpose of complying with the scheme of observation.

9. It will be the duty of each Administrator or Deputy Administrator in charge of an Observation Port—

- (a) to determine in the light of actual conditions how many Observing Officers should be embarked in each vessel calling at the port for the purpose of submitting to observation;
- (b) to notify to the Board the names of all vessels bound from his port for Spanish ports which had embarked Observing Officers and the names of those officers, it being the duty of the Board to communicate this information to the Governments taking part in the naval observation scheme;
- (c) to submit a report to the Board, for transmission to the International Committee whenever one of the Observing Officers reports to him that he has witnessed in a Spanish port either the unloading of arms or war material, or the disembarkation of foreign nationals entering that country, in contravention of the Non-Intervention Agreement, for the purpose of taking service in the present conflict from a vessel in which he was stationed;
- (d) to submit to the Chief Administrator, for the information of the Board, periodical reports in regard to all vessels on which Observing Officers have been embarked and from which no cargo or passengers have been landed in Spanish ports in contravention of the Non-Intervention Agreement.

*The Duties to be Imposed on the Masters of Ships, the Facilities to be Granted To, and the Duties Of, the Observing Officers*

10. The duties to be imposed on the masters of ships having the right to fly the flags of the countries which are parties to the Non-Intervention Agreement, and the facilities to be granted to, and the duties of, the Observing Officers will be as follows:

- (a) the participating Governments will instruct the masters of all ships having the right to fly the flags of their respective countries, before proceeding to a Spanish port, to call at one of the Observation Ports specified in paragraph 12 below for the purpose of embarking Observing Officers, and, having done so, to give all necessary facilities to those officers to enable them to discharge the duties set out in (c) below, and to disembark such officers at another port indicated by the Administrator or Deputy Administrator in accordance with paragraph 18 below, these facilities to include the right—
  - (i) at any convenient time during the voyage to obtain all necessary information from the master as to the cargo carried which is consigned to Spanish ports, and to inspect papers relating thereto;
  - (ii) at any convenient time during the voyage to obtain all necessary information from the master, and, in his presence, or

## THE SPANISH CIVIL STRIFE

in that of an officer nominated by him for the purpose, to interrogate passengers, officers and crew, proceeding to Spanish ports and to examine the passports of passengers and the identity papers of the officers and crew;

- (iii) to be present at the unloading of any goods or disembarkation of any persons in a Spanish port and to require the master to have opened for inspection any package which is being unloaded, and which the Observing Officer has reasonable grounds for suspecting to contain war material sent in contravention of the Non-Intervention Agreement, and to require the master to have any necessary unpacking, repacking and sealing-up done;
- (b) the Chief Administrator, Administrators, and Deputy Administrators and their subordinates will be granted by the participating Governments the immunities normally accorded to diplomatic and consular officers; the right of free communication with the Board will be granted to the Chief Administrator, and to Administrators and to Deputy Administrators, subject to any directions issued by the Board or (in the two last-named cases) by the Chief Administrator; and the Chief Administrator, Administrators and Deputy Administrators and their subordinate staff will be granted full facilities to enable them to exercise the rights and to discharge the duties assigned to them, and, in particular, these officers will be granted the same priority for telephone and telegraph services as are accorded to diplomatic officers stationed in or to the national officials of, the country in question; and the Observing Officers, when engaged on duty at sea, will be granted the same priority for telephone and telegraph services as are granted to the service messages of the master of the vessel on which they have been embarked;
- (c) The duties of the Observing Officers, when on board vessels in Spanish ports, will be to take, within the limit of the facilities accorded to them under (a) above, all steps which they may consider necessary to satisfy themselves—
  - (i) whether any arms or war material of the classes covered by the Non-Intervention Agreement are being unloaded; and
  - (ii) whether, in contravention of the Non-Intervention Agreement, any foreign nationals intending to take service in the present conflict are being disembarked;
  - (iii) on leaving any Spanish port that no passenger or member of the crew, who may have left the ship while in port, has failed to return in contravention of the Non-Intervention Agreement;
- (d) The participating Governments will issue any instructions which may be necessary to require any owners and masters of vessels having the right to fly flags of their respective countries to take

- all steps in their power to prevent the landing in a Spanish port, in contravention of the Non-Intervention Agreement, of any arms or war material or passengers which or who the Observing Officers may ascertain are being carried by the vessel in question;
- (e) The Observing Officers, on their disembarkation, will immediately submit to the Administrator or Deputy Administrator in charge of the nearest Observation Port a report in writing, stating either that no offence against the Non-Intervention Agreement has been committed by the ship in which they had been stationed, or, if such an offence has been committed, what is the nature of the offence;
  - (f) The participating Governments will take such legal or other proceedings as may be found appropriate against the owners or masters of vessels in cases indicated in (e) above, and in due course will submit a report to the Board regarding any penalties inflicted.

#### *The Observation Ports*

11. It is an essential part of the scheme that the Observation Ports at which the ships having the right to fly the flags of the countries which are parties to the Non-Intervention Agreement will embark Observing Officers should be determined in accordance with definite rules, though, in particular cases, or particular classes of case, the Administrators in charge of any of the principal Observation Ports referred to in paragraph 13 below will have the right to make special arrangements for the embarkation of Observing Officers at other ports to suit, as far as possible, the convenience of the shipping concerned from the commercial point of view, subject to the general provisions contained in paragraph 6 above.

12. At the outset of the scheme, the obligations to be laid on merchant ships, proceeding to Spanish ports (other than the Canary Islands, which are dealt with in paragraph 14 below), will be in accordance with the following rules:

- (a) If the ship is passing in either direction through the Straits of Gibraltar before calling at any Spanish port she will call at Gibraltar, it being understood that *this rule overrides all the following rules, which therefore only apply to vessels which do not come within its scope.*
- (b) If the ship is passing through the English Channel on her way to a Spanish port from a port lying to the north of Dover, she will call either at Dover or at the Downs;
- (c) If the ship (not being a ship covered by (b) above) proceeds to a Spanish port from a Channel port south of Dover, she will call at Cherbourg, unless the ship is proceeding from a port between Cherbourg and Brest, in which case she will be dealt with under (d) below;
- (d) If the ship is proceeding from the Irish Free State or from

- Northern Ireland or from the Irish and Bristol Channels, or from a port between Cherbourg and Brest, she will call at Brest;
- (e) If the ship (not being a ship covered by (b) above) proceeds to a Spanish port from a French Atlantic or Biscayan port south of Brest, she will call at Le Verdon;
  - (f) If the ship is approaching westward through the Mediterranean or from a port in the Mediterranean, east of Longitude  $12^{\circ}$  East, she shall call at Palermo, unless for commercial reasons, she is in any case proceeding to Marseilles, in which case it shall be permitted to embark Observing Officers at that port;
  - (g) If the ship (not being a ship covered by (f) above) proceeds to a Spanish port from a North African port west of Longitude  $12^{\circ}$  East, she will call at Oran;
  - (h) If the ship (not being a ship covered by (f) above) proceeds to a Spanish port from a port on the French or Italian coast between Marseilles and Longitude  $12^{\circ}$  East, or from Corsica or Sardinia, she will call at Marseilles;
  - (i) If the ship (not being a ship covered by (f) above) proceeds to a Spanish port from a French Mediterranean port west of Marseilles, she will call at Cette;
  - (k) If the ship is approaching from the west of Longitude  $15^{\circ}$  West, or is approaching in the Atlantic from the southward of Latitude  $28^{\circ}$  North, she will call at one of the following ports, viz., Madeira, or Gibraltar, or Lisbon;
  - (l) If the ship is coming from a port on the Atlantic seaboard of Morocco, she will call at Gibraltar, or, in the case of ships proceeding to Spanish ports north of Portugal, at Lisbon;
  - (m) If the ship is coming from a Portuguese port, she will call at Lisbon.

#### *Definition of Principal Observation Ports*

13. The Observation Ports which are to be regarded as principal Observation Ports at the outset of the scheme are the following:

The Downs (or Dover).  
 Cherbourg.  
 Lisbon.  
 Gibraltar.  
 Marseilles.  
 Palermo.  
 Madeira.

#### *Special Provisions in Relation to the Canary Islands*

14. The Committee accepts the principle that observation shall be applied with equal efficiency to all parts of Spanish territory. The method of applying observation in the case of the Canary Islands presents special difficulty, but a system of observation will be determined by the International

Committee not later than the 31st March, 1937, and will be brought into operation at the earliest possible date thereafter.

*The Provision of Accommodation at Sea for Observing Officers*

15. The owners of vessels having the right to fly the flags of the countries which are parties to the Non-Intervention Agreement, proceeding to Spanish ports, will be under an obligation to provide accommodation for the Observing Officers equivalent to that normally provided in corresponding vessels belonging to the same nation, for officers such as mates or, in a passenger ship (*i.e.*, a ship having accommodation for more than twelve passengers), for first-class passengers. In cases where there is no accommodation classed as first class, the accommodation to be provided will be of the highest class in the ship.

16. Shipowners will be placed under an obligation to provide messing similar to that provided for the masters of the ships concerned or for first-class passengers, for which payment will be made from the International Fund referred to in paragraph 52 below at a standard rate or rates to be approved by the International Committee on the recommendation of the Board.

17. The Observing Officers will be carried on the same conditions with regard to liability for life and property as are passengers on the vessel in question.

*The Disembarkation of Observing Officers*

18. Subject to the approval of the Chief Administrator referred to in paragraph 7 above, the Administrator or Deputy Administrator in charge of each Observation Port will have the right to require the master of a ship which has embarked Observing Officers to disembark them at any port which would not entail an unreasonable deviation after the vessel has finally quitted Spanish waters. To this end the master of such a ship will be put under an obligation to disembark the Observing Officers (at the discretion of the Administrator or Deputy Administrator at the port of embarkation) either at the Observation Port nearest to the route that the master intends to follow after leaving Spanish waters, or at any other port which does not entail more than 50 sea miles' additional steaming.

*Special Arrangements for Regular Trades*

19. Shipowners engaged in regular trade with Spanish ports will be permitted, should they so desire, to arrange with the Board for Observing Officers to be stationed continuously on board their vessels, the additional expenditure involved being defrayed by the shipowner concerned. It will be the duty of the Board to arrange for such Observing Officers to be changed at reasonably frequent intervals.

*No Liability in Respect of Delay or Diversion of Ships*

20. No payment will be made from the International Fund referred to in paragraph 52 below to shipowners in respect of delay or diversion

occasioned by the necessity to embark or disembark Observing Officers, provided either—

- (a) that the Administrator or Deputy Administrator in charge of the Observation Port concerned embarks the Observing Officer or Officers at the earliest possible moment, and, in any case, not later than four hours after the master or agent of the ship shall have reported its arrival to the Administrator or Deputy Administrator in charge of the port; or
- (b) that the provisions in (a) above will not apply in those cases where the special arrangements indicated in paragraph 11 above have been brought into operation; or
- (c) that, if the Administrator or Deputy Administrator is unable to comply with (a) above, he will hand to the master of the ship a document certifying that he called at the port in order to comply with the scheme and that no Observing Officers were available to be embarked in his ship, the Administrator or Deputy Administrator in all such cases reporting the circumstances immediately to the Board.

#### *Exemption of Ships from Dues in Certain Cases*

21. The Representatives of the Governments of the countries in which the Observation Ports are situated will consult with one another with a view to reaching agreement, on behalf of their respective Governments, (a) for the exemption, on a mutual basis, of ships calling at those ports merely for the purpose of embarking and disembarking Observing Officers, from dues and other charges (excluding pilotage) normally paid by ships entering those ports, or, (b) if this is not possible, for the reduction of those charges to an equal extent in each of the countries concerned. In so far as such exemptions or reductions cannot be secured, the expenditure involved, together with expenditure incurred on pilotage, except in those cases in which the ship would in any case for commercial reasons have called at the port in question, will be defrayed from the International Fund referred to in paragraph 52 below.

22. The Administrators and Deputy Administrators in charge of Observation Ports will arrange, wherever possible, for Observing Officers to be embarked in such positions as will not necessitate the ships in question incurring either pilotage or dues.

#### IV. THE ESTABLISHMENT OF A SYSTEM OF NAVAL OBSERVATION OF THE COASTS OF SPAIN AND THE SPANISH DEPENDENCIES

##### *The General Character of the Scheme for Naval Observation*

23. In order to ensure that the procedure, prescribed in paragraph 6 above and subsequent paragraphs, in regard to the scheme for sea observation is duly observed, a system of naval observation will be established around the Spanish coasts.



*The Powers by Which Naval Observation Will be Exercised*

24. The duty of naval observation will be undertaken by the Governments of the United Kingdom, France, Germany and Italy.

*The Establishment of Observation Zones*

25. For the purpose of naval observation the Spanish coasts will be divided into zones, and the responsibility for observation within each zone will rest exclusively upon the Naval Power exercising observation in that zone.

*The Delimitation of the Observation Zones*

26. At the outset of the scheme, for the purposes indicated in paragraph 25 above, the Spanish coasts will be divided into the following zones:

- A. On the north coast of Spain from the French frontier to Cape Busto.
- B. On the northwest coast of Spain from Cape Busto to the Portuguese frontier.
- C. On the south coast of Spain from the Portuguese frontier to Cape De Gata.
- D. On the southeast coast of Spain from Cape De Gata to Cape Oropesa.
- E. On the east coast of Spain from Cape Oropesa to the French frontier.
- F. The Spanish-Moroccan coast.
- G. The islands of Iviza and Majorca.
- H. The island of Minorca.<sup>1</sup>

27. The duties of naval observation within each zone will only be exercised within a distance of ten sea miles from any point on the Spanish coast.

*The Allocation of the Observation Zones**Among the Naval Powers Concerned*

28. At the outset of the scheme responsibility for the observation zones will be allocated as follows:

- A. United Kingdom.
- B. France.
- C. United Kingdom.
- D. Germany.
- E. Italy.
- F. France.
- G. France.
- H. Italy.

*The Establishment of a Special Régime in the Territorial Waters of the Countries Adjacent to Spain*

29. In order to avoid the risk of ships escaping observation by entering Spanish territorial waters direct from the territorial waters of one of the

<sup>1</sup> The question of the establishment of naval observation around the Canary Islands will be dealt with in accordance with the principles set out in paragraph 14 above.

adjacent countries, the Governments of the adjacent countries will themselves exercise observation over ships passing through these waters. The Governments of the adjacent countries will in due course notify to the International Committee the steps which they have severally taken to give effect to this arrangement, and will communicate to the Committee particulars regarding any infringements of the Non-Intervention Agreement which may be detected in this manner.

*Duties of the Powers Undertaking Naval Observation*

30. Each of the Governments exercising naval observation will—

- (a) report immediately to the International Committee the arrival in any Spanish port in one of the zones for which it is responsible of any ship the name of which has not been notified as having submitted to observation, and will notify to the International Committee the name of any ship which refuses to submit to observation, when the need for such observation has been pointed out to it in the manner prescribed in paragraph 38 below.
- (b) submit periodical reports to the International Committee giving full particulars regarding the arrival of all ships entering Spanish ports within the zones for which it is responsible.

*The Method of Observation to Be Adopted*

31. The actual method by which observation will be exercised in each zone will be left to the discretion of the Government to whom responsibility for that zone is allotted, subject to the qualification that, if any Government desires to make special arrangements to control the movements of ships in a manner such as that indicated in paragraph 36 below, it shall first obtain the consent of the International Committee.

*Distance from Coast at Which Naval Observation Will be Conducted*

32. Ships having the right to fly the flags of the countries which are parties to the Non-Intervention Agreement, proceeding to Spanish ports will only be liable to the system of naval observation prescribed in paragraph 23 above when they are not more than ten sea miles from the nearest point on the Spanish coast. Further, such ships will only be subject to naval observation by the naval vessels of the particular Power which has accepted responsibility for observation in the zone in question.

*The Use of Special Flags in Connection with the Scheme*

33. The naval vessels, while actually engaged in the task of naval observation, will fly the pennant which has already been adopted under the terms of the North Sea Fisheries Convention. Ships which have the right to fly the flags of the countries which are parties to the Non-Intervention Agreement will, when proceeding to Spanish ports, after having embarked Observing Officers at one of the Observation Ports, or having, in lieu thereof, been granted a certificate in the manner prescribed in paragraph 20 above, fly also

a specially agreed pennant to indicate that they have complied with the procedure laid down in the paragraph referred to above.

34. The mere fact that a ship having the right to fly the flag of any of the countries which are parties to the Non-Intervention Agreement, when approaching a Spanish port, is flying the specially agreed pennant referred to in paragraph 33 above, will not be regarded by the vessels engaged in naval observation as affording evidence that the ship in question is in fact carrying Observing Officers, and the naval vessels concerned will take all necessary steps, as laid down in paragraph 37 below, to verify the character of the ship in question.

35. Severe penalties will be imposed by the participating Governments on the masters of ships, having the right to fly their respective flags who fly on their ships the specially agreed pennant referred to in paragraph 33 above, if there are no Observing Officers on board their vessels, or unless they have been furnished with a certificate in accordance with paragraph 20(c) above.

*The Establishment of Focal Areas in Certain Cases*

36. In order to simplify the work of naval observation, the Powers undertaking that observation may establish in the approaches to some or all of the zones focal areas through which all ships having the right to fly the flag of the countries which are parties to the Non-Intervention Agreement, proceeding to ports within those zones would be required to pass, but, as stated in paragraph 31 above, such focal areas will not be established without the prior approval of the International Committee.

*The Duties and Rights of Officers Commanding Vessels Taking Part in the Scheme*

37. The Governments which are parties to the Non-Intervention Agreement will take such steps as are necessary to confer upon the officers in command of the naval vessels engaged in naval observation the right, within the area laid down in paragraph 32 above:

- (a) To verify the identity of any ship, having the right to fly the flag of any of the participating countries that may be thought to be proceeding towards any port in Spain or in the Spanish Dependencies; and for this purpose, when necessary, to order such ships to stop, to board them and to examine their certificates of registry and clearance documents, and to ascertain whether there are Observing Officers on board;
- (b) to ascertain whether the ship has called at one of the Observation Ports enumerated in paragraph 12 above, and has taken on board Observing Officers, or has been furnished with a document by the Administrator or Deputy Administrator in charge of an Observation Port, certifying that the vessel had called at the port in accordance with paragraph 20(c) above;
- (c) if and when a special plan has been submitted to, and approved by, the International Committee, to establish focal areas in the

approaches to each zone, and to require all ships having the right to fly the flag of any of the participating countries to pass through the areas so established, when entering the zone.

38. No right of search will be accorded to the naval vessels engaged in naval observation, but whenever a ship fails to comply with the instructions of a naval vessel engaged in naval observation, given in accordance with the provisions laid down in paragraph 37 above, or whenever the officer in command of a naval vessel ascertains that the master of a ship has not complied with the procedure laid down in paragraph 12 above, or has improperly flown the special pennant referred to in paragraph 33 above, he will draw the attention of the master to his obligations under the Non-Intervention Agreement to which the Government of his country is a party, and will point out that he would therefore be committing an offence against the laws of his own country unless he submits to observation before reaching a Spanish port. Non-compliance by a particular ship with the procedure here laid down will be regarded as *prima facie* evidence that the ship has committed a breach of the Non-Intervention Agreement, and will entail the consequences indicated in paragraph 39 below.

39. In the circumstances outlined in paragraph 38 above, the officer in command of the naval vessels will submit a report to his Government, so that that Government may report the matter both to the International Committee and to the Government of the country to which the vessel in question belongs, in order that legal proceedings can be taken in the courts of that country. Any necessary evidence of the officers or crew of the naval vessel or of the Administrators and Deputy Administrators or their subordinate staff will, wherever possible, be taken upon commission in the method prescribed in the country concerned, in order to avoid the necessity of these witnesses having to proceed to the country in which the trial takes place.

*Reports to be Submitted by Participating Governments in Certain Cases*

40. In the event of the master of any ship having the right to fly the flag of any of the countries which are parties to the Non-Intervention Agreement, being detected by a naval vessel engaged in naval observation, while attempting to commit a breach of the Non-Intervention Agreement in the manner indicated in paragraph 39 above, the Government of the country in which the ship so detected is registered will submit a full report to the International Committee regarding the circumstances of the case and, later, regarding the legal or other penalties inflicted upon the owner or master of the ship in question as the case may be.

V. THE INTERNATIONAL STAFF REQUIRED FOR THE OBSERVATION SCHEME

41. One of the most difficult tasks in the course of the preparation of the observation scheme has been to decide the number of international officials whom it will be necessary to employ to ensure the efficient operation of the scheme.

42. In this task careful consideration has been given to estimates which have been prepared by Technical Advisory Sub-Committees composed of experts nominated by the Representatives of those countries which are members of the Chairman's Sub-Committee of the International Committee. These estimates have been accepted as the most reliable which in existing circumstances it is possible to obtain. Nevertheless, it is impossible at this stage to determine with certainty how many officials will be required for the proper discharge of each part of the scheme. The arrangements which have been agreed upon for the staffing of this organisation must thus be regarded as tentative only, and as liable to revision in one direction or another in the light of experience gained in the actual operation of the scheme.

43. It is an essential feature of the scheme that it will be brought into operation in a series of stages.

44. The first stage will begin when the Chief Administrators, Administrators and Deputy Administrators and their personal staffs have been appointed and have taken up their respective posts. These officials will at once enter into the closest relations with the national officials of the countries in which they are stationed and will make all arrangements necessary to bring the next stage into operation. In this same period arrangements will be made for the recruitment of the subordinate officials who will be required.

45. The second stage will begin when a sufficient number of subordinate officials have been recruited and despatched to their posts, to enable the supervision scheme to be brought into operation on a skeleton basis. During this stage, it is envisaged that the Board will exercise their discretion as to the interim arrangements necessary until it is possible to bring the full scheme into operation.

46. The third and final stage will be reached when the full complement of officials for each branch of the scheme has been recruited and they have been despatched to their posts.

47. It is anticipated that considerable practical experience regarding the number of officials required for each part of the scheme will have been gained during the period in which the scheme will have been in operation on a skeleton basis. It has been agreed, therefore, that at the end of the second stage referred to in paragraph 45 above the officers in charge of the main divisions of the scheme should be instructed to prepare for submission to the Board interim reports describing the working of the portions of the scheme for which they are severally responsible, and setting out their recommendations in regard to staff requirements.

48. If either of the Chief Administrators or the Administrator at Gibraltar is of the opinion that, even with the full staff provided in the scheme now agreed upon, he would not have at his disposal a sufficient number of officials for the proper discharge of his duties, the International Committee will take such steps as may be found, on examination, to be necessary to ensure the efficient operation of the portion of the scheme in question.

49. In the light of the foregoing considerations, it has been agreed to

recruit the staffs shown below for each of the principal portions of the scheme.

- (a) *For the Franco-Spanish frontier.*  
130 Observing Officers and Assistant Observing Officers.
- (b) *For the Gibraltar-Spanish frontier.*  
5 Observing Officers and Assistant Observing Officers.
- (c) *For the sea observation scheme.*  
550 Observing Officers and Assistant Observing Officers.

50. The figures given above are in each case exclusive of the Chief Administrators, Administrators, and Deputy Administrators, and their personal and administrative staffs.

## VI. THE COST OF THE SCHEME

### *The Cost of the Schemes of Land and Sea Observation*

51. The cost of the scheme as set out in Chapters II and III of the present Annex is estimated at £834,000 if it were to continue in operation for a full period of twelve months.<sup>2</sup>

### *Establishment of an International Fund*

52. In order to provide the funds required, it has been agreed to establish an International Fund to which the several Governments will contribute on agreed scales.

### *The Administration of the International Fund*

53. The International Fund established in accordance with paragraph 52 above will be administered by the Board.

### *The Cost of the Scheme of Naval Observation*

54. Each of the Naval Powers participating in the scheme of naval observation (paragraphs 23 to 40 above) will defray the cost of observation which it has itself agreed to undertake.

## VII. THE DATE ON WHICH THE SCHEME SHALL COME INTO OPERATION

### *Date of Appointment of the Board*

55. The Board will come into existence as from the date of the adoption of the present Agreement, *i.e.*, as from the 8th March, 1937.

<sup>2</sup> His Majesty's Government in the United Kingdom have made themselves directly responsible for the payment of 80 per cent of the cost of the special arrangements in Portugal, the remaining 20 per cent being paid by the Portuguese Government themselves. This liability is estimated at £64,000, and a corresponding adjustment of the percentages will be made to ensure a fair distribution of financial liabilities. This adjustment will not entail any changes in the sums paid to the International Fund by the respective Governments, except in the case of His Majesty's Government in the United Kingdom.

*The First Task of the Board*

56. The Board will organise the scheme for land and sea observation with the greatest possible despatch, and will report to the International Committee immediately they have made arrangements which would enable the two parts of the scheme to be brought into operation on a skeleton basis.

*Arrangements to be Brought Into Force Forthwith*

57. Immediate arrangements are being made for the appointment of the Chairman of the Board, the Chief Administrator under the Sea Observation Scheme, the Chief Administrator in France, and the Administrator at Gibraltar, who will take up their respective duties immediately upon appointment.

58. The Naval Powers which have agreed to undertake the duty of naval observation have notified the International Committee that they will be in a position to begin the duties which they have agreed to undertake on Saturday, the 13th March, 1937.





## APPENDIX VII

### THE LEGISLATIVE AND OTHER MEASURES APPLIED BY THE PARTICIPATING GOVERNMENTS TO GIVE EFFECT TO THE SCHEME OF MARCH 8, 1937

#### I

##### ALBANIA

LETTER OF THE ALBANIAN MINISTRY OF FOREIGN AFFAIRS, POLITICAL  
DIVISION, TO THE LEGATION OF THE UNITED STATES AT TIRANA,  
JUNE 25, 1938<sup>1</sup>

In reply to Note No. 23 . . . (See Appendix II—Albania)

As regards the Albanian merchant marine the Royal Government has  
decided to conform with the international decisions pertaining to this matter.

<sup>1</sup> Communicated to the author by the American Minister. Further details not  
obtainable.

#### 2

##### AUSTRIA

No measures adopted.

#### 3

##### BELGIUM

- I. LAW FOR THE ASSURANCE OF THE NON-INTERVENTION OF BELGIUM IN  
THE CIVIL WAR OF SPAIN, JUNE 11, 1937

(See Appendix V—Belgium)

- II. ROYAL DECREE FOR NON-INTERVENTION IN SPAIN IN MARITIME  
MATTERS, JUNE 22, 1937<sup>1</sup>

(*Translation*)

Leopold III, . . .

In view of the law of June 11, 1937, for the assurance of the non-interven-  
tion of Belgium in the civil war of Spain;

In view, especially, of Article 2 of that law;

<sup>1</sup> *Moniteur Belge*, Nos. 193-194, July 12 & 13, 1937, pp. 4407-4409.

On the recommendation of Our Ministers united in Council,  
We have decreed and We decree :

ARTICLE 1. It is forbidden to load in any manner on board Belgian commercial vessels or fishing vessels, or to embark thereon for a Spanish port as a destination, any material of war referred to by the international arrangement for assuring non-intervention in the civil war of Spain, as well as any persons proposing to take engagement in the armies participating in the said war.

The discharge and the debarkation of materials and of persons referred to in the first paragraph are, likewise, formally forbidden.

ART. 2. Commercial vessels proceeding toward a Spanish port are required, before entering Spanish waters, to call at the port which will be designated by the maritime commission or by the Belgian consul at the port of departure, for the purpose of there embarking one or two observers commissioned by the International Bureau of Non-Intervention in Spain.

The observers will be designated for each vessel by the administrator delegated by the International Bureau referred to above.

ART. 3. Masters of Belgian vessels are required to provide the observers, commissioned as stated in Article 1, all of the necessary facilities for the accomplishment of their mission and especially:

(a) To furnish them all information as to the nature of the cargo transported with a Spanish port as destination and to produce all documents on board relating thereto;

(b) To respond at any appropriate moment during the course of the voyage, to any requisition concerning the identity of the passengers on board, as well as of the officers and members of the crew, and to facilitate the interrogation of these, as well as the examination of their passports and identification papers;

(c) To put them in a situation of assisting at the debarkation of all goods or of all persons in a Spanish port, to proceed to the opening for verification of any package in the course of debarkation, and to conform to any requisition of the observers in that regard.

ART. 4. The masters of vessels referred to in Article 2 are required to furnish to the commissioned observers on board either the lodging and subsistence provided to the passengers of the superior class if it is a passenger vessel, or the accommodations for the ranking officers on board if it is a cargo vessel.

The ship-owner will contingently be required to make the necessary arrangements for assuring the accommodations on board under the conditions prescribed above.

Whatever may be the nature of the vessel on board which they are commissioned, the observers are assimilated to passengers so far as the responsibility of the ship-owner is concerned with respect to their lives and their belongings.

The observers enjoy, especially on board, diplomatic immunity.

They are entitled to the use of the radio facilities on board for the requirements of accomplishing their mission.

ART. 5. Masters are required to debark the observers referred to above at the ports which will be designated to them for that purpose by the administrators of the International Bureau.

ART. 6. Masters and ship-owners cannot claim other compensation on account of the deviations from their courses submitted to by their vessels, or other exemptions from duties and taxes than those which are recognized by the Committee of non-intervention in London.

ART. 7. Masters having on board observers referred to above, are required, following the prescriptions of the Committee in London, and conforming to the instructions of the International Bureau, to fly the special pennant determined by them, attesting that one or more observers are on board.

Masters of vessels of commerce and skippers of fishing vessels are required alternatively to go through, for attaining the Spanish ports of destination, the focal areas of approach to these ports fixed by the International Bureau.

They are required, moreover, to submit to the commands and investigations of the naval units of the States participating in the naval surveillance organized for executing the arrangement of non-intervention.

ART. 8. Any infraction of the provisions of the present decree is punishable by the penalties provided in Article 3 of the law of June 11, 1937.

The same penalties are to be incurred by whoever creates an obstacle to the accomplishment of the mission of the observer, as well as by any master who may have falsely flown the pennant provided for in Article 7 above.

Our Minister of Foreign Affairs and of Foreign Commerce, and Our Minister of Transports are charged, each as may be concerned, with executing the present decree.

## 4

## UNITED KINGDOM

I. MERCHANT SHIPPING (CARRIAGE OF MUNITIONS TO SPAIN) ACT, 1936  
(See Appendix III—United Kingdom)

II. MERCHANT SHIPPING (SPANISH FRONTIERS OBSERVATION) ACT, 1937<sup>1</sup>

Whereas His Majesty's Government in the United Kingdom have, by an agreement (hereafter referred to as "the observation agreement") embodied in a resolution adopted on the eighth day of March, nineteen hundred and thirty-seven, by the International Committee for the application of the agreement regarding non-intervention in Spain, agreed with the Govern-

<sup>1</sup> 1 Edw. 8 and 1 Geo. 6. c.19.

ments of certain other countries to establish in the manner provided in the observation agreement, unless otherwise amended or determined, a system of observation of the Spanish frontiers for the purpose of ascertaining whether the agreement regarding non-intervention in Spain is being effectively observed;

And whereas the said system, under the terms of the observation agreement, is to be carried into effect by a body referred to therein as "the International Board for Non-Intervention in Spain" and by certain officers, who are referred to in the observation agreement and in this Act as "the chief administrator," "administrators," "deputy administrators" and "observing officers";

And whereas, in order to enable effect to be given to the said agreement, it is expedient to make such amendments of the law relating to merchant shipping as are hereafter contained in this Act;

Now, therefore, be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. (1) No ship to which the Merchant Shipping (Carriage of Munitions to Spain) Act, 1936<sup>2</sup> (hereafter in this Act referred to as "the Act of 1936") applies and which is bound to a port or place in Spanish territory shall enter any waters adjacent to Spanish territory unless she has first proceeded to the prescribed place and there embarked such observing officers as may be deputed in that behalf by the administrator at that place:

Provided that—

(a) a ship shall not be deemed to have contravened the foregoing provisions of this subsection by reason only that she has been compelled to enter waters adjacent to Spanish territory, either in order to reach the prescribed place, or by stress of weather or any other circumstance which neither the master nor the owner of the ship could have prevented or forestalled; and

(b) there may, by agreement between the master or owner of any ship and the chief administrator or the administrator at the prescribed place, be substituted for the prescribed place, in relation to that ship while on the voyage on which she is then engaged, such other place as may be so agreed; and

(c) the administrator at the prescribed place may, if it appears to him that he has for the time being an insufficient number of observing officers available for embarkation on any ship, exempt that ship from the provisions of this subsection while on the voyage on which she is then engaged.

(2) Any observing officers so embarked on any such ship shall be entitled to remain on board the ship until disembarked in the manner provided in the next following subsection.

<sup>2</sup> See Appendix III—United Kingdom.

(3) When any ship to which the Act of 1936 applies, having observing officers on board in pursuance of this Act, leaves a port or place in Spanish territory bound to any port or place not in Spanish territory, she shall proceed to the prescribed place, taking the shortest available route thereto unless otherwise agreed between the master or owner of the ship and the administrator who deputed the observing officers on board the ship, and shall there disembark the said officers:

Provided that the said administrator may substitute another place for the prescribed place, so, however, that, without the consent of the master or owner of the ship, no such substitution shall be made which would increase the length of the ship's intended voyage by more than fifty sea miles.

(4) If any ship to which the Act of 1936 applies contravenes or fails to comply with the foregoing provisions of this section, the master of the ship shall be guilty of a misdemeanour, and the owner of the ship shall also be guilty of a misdemeanour if he is privy to the contravention or failure.

(5) The Board of Trade may on the application of the owner and with the consent of the authority, by licence exempt any ship, being a ship which is shown to the satisfaction of the Board of Trade to be regularly engaged in carrying goods or passengers to or from Spanish territory, from the foregoing provisions of this section on the following conditions, namely:

(a) that the ship does not, except with the consent of the chief administrator, proceed to sea from any port or place without having on board such observing officers as may be deputed from time to time in that behalf by the chief administrator; and

(b) that the owner of the ship pays to the authority on demand such additional expenses as may from time to time be certified by the Board of Trade to have been incurred by the authority by reason of the ship complying with the condition aforesaid, instead of complying with the said provisions of this section.

The Board of Trade may at any time, and shall at the request of the authority or the owner of the ship, cancel any licence granted under this subsection.

If any ship while exempt under this subsection fails to comply with the condition specified in paragraph (a) of this subsection, the master of the ship shall be guilty of a misdemeanour, and the owner of the ship shall also be guilty of a misdemeanour if he is privy to the failure to comply with the condition.

(6) An observing officer carried in a ship in pursuance of this Act shall, while on board the ship, be entitled to be provided with subsistence and accommodation, and to require signals to be made and to require messages to be sent by wireless telegraphy, in accordance with regulations made under this section, and also to exercise the following powers:

(a) he may at any reasonable time require the master to produce any documents and furnish any information in his possession relating to any cargo destined for Spanish territory which is being carried in the ship;

(b) he may, if he has reasonable grounds for suspecting that the contents of any package carried in the ship do not correspond with the particulars shown in the documents produced to him, or if the description of the contents of any package shown in those documents, taken with any description thereof shown on the package, is insufficient to enable him to discharge his duties under the observation agreement, require the master to cause the package to be opened for his inspection immediately before it is discharged from the ship;

(c) he may at any reasonable time require the master to produce the agreement with the crew and any other documents in his possession relating to a member of the crew;

(d) he may at any reasonable time, in the presence of the master or an officer of the ship authorised in that behalf by the master, require any passenger to produce his passport and require any passenger or member of the crew to state whether he proposes to disembark at a port or place in Spanish territory and, if so, his reasons for so disembarking;

(e) he may be present at the unloading of any goods and the disembarkation of any persons at any port or place in Spanish territory or in the waters adjacent to Spanish territory;

and if the master of the ship or any other person on board the ship fails to do anything duly required of him by an observing officer under this subsection, or obstructs such an officer in the exercise of his powers under this subsection, or, being duly required by such an officer to furnish any information or make any statement, furnishes information or makes a statement which he knows to be false, he shall be liable to a fine not exceeding one hundred pounds.

(7) Every ship to which the Act of 1936 applies having observing officers on board in pursuance of this Act, or being engaged on a voyage on which she has been exempted by an administrator from the provisions of subsection (1) of this section under the proviso thereto, shall, while in waters adjacent to Spanish territory, display the prescribed signals; and if in those waters any such ship, having any such officers on board or being so engaged, fails to display the prescribed signals or, having no such officers on board and not being so engaged, displays the prescribed signals, the master of the ship shall be liable to a fine not exceeding one hundred pounds.

(8) The Board of Trade may make regulations—

(a) as to the subsistence and accommodation to be provided for observing officers on ships to which the Act of 1936 applies and as to the powers of such officers to require signals to be made and to require messages to be sent by wireless telegraphy;

(b) as to the payments to be made by the authority to the owners of such ships in respect of the subsistence provided for observing officers and in respect of tolls, dues, rates or charges of any kind incurred by such ships by reason only of their entering or using a port solely for the purpose of embarking or disembarking such officers, and as to the payments (if any) to be so made in respect of the accommodation provided for such

officers and the signals and messages required to be made and sent by them;

(c) prescribing the signals to be displayed for the purpose of the last foregoing subsection;

(d) prescribing, according to the voyages on which they are for the time being engaged, the places to which, subject to the provisions of this section, such ships are to proceed for the purpose of embarking and disembarking observing officers in pursuance of this Act;

and for the purpose of any provision of this section the expression "the prescribed place," in relation to a ship engaged on any voyage, means the place specified in relation to that voyage in the regulations applicable for the purpose of that provision.

(9) For the purpose of any enactment which defines a passenger steamer by reference to the number of passengers carried, an observing officer carried in any ship, whether British or foreign, in pursuance of this Act or the observation agreement shall not be deemed to be a passenger.

2. (1) An officer of a ship of war which fulfils the conditions hereafter specified in this section may exercise the following powers as respects ships to which the Act of 1936 applies while they are within waters adjacent to Spanish territory, that is to say—

(a) he may go on board the ship and for that purpose may require the ship to stop;

(b) he may require the master to produce the certificate of registry of the ship and the clearance of the ship from its last port of call;

(c) he may require the master to state whether any observing officers are on board the ship, and to allow him to interview any such officers stated by the master to be on board.

(2) The conditions which a ship of war must fulfil in order to entitle an officer thereof to exercise the foregoing powers shall be as follows:

(a) the ship must be a ship of war of one of such Powers as may be declared, by an order for the time being in force under this section, to have been entrusted under the observation agreement with observation duties in the waters adjacent to Spanish territory;

(b) the ship must be in such of the said waters as may be so declared to have been placed under the observation of the Power to which the ship belongs;

(c) the ship must be displaying such signals as may be so declared to be required by the said agreement to be displayed by ships of war engaged in the said duties.

(3) Any order under this section shall be made by the Secretary of State, and may be revoked or varied by a subsequent order made by the Secretary of State.

(4) The powers conferred by subsection (1) of this section, if and so far as they are conferred on officers of His Majesty's ships of war, shall be in addition to and not in derogation of any other powers conferred upon them

by any enactment, and may be exercised as respects any ship of a country the Government of which is a party to the observation agreement as well as respects ships to which the Act of 1936 applies.

(5) If any ship to which the Act of 1936 applies, being duly required under this section to stop, fails to comply with that requirement, the master of the ship shall be guilty of a misdemeanour, and if the master of any such ship fails to produce any document or make any statement which he is duly required to produce or make under this section, or if any person on board any such ship obstructs any officer in the exercise of his powers under this section, he shall be liable to a fine not exceeding one hundred pounds.

3. (1) His Majesty may make such Orders in Council as appear to him to be necessary or expedient for the purpose of giving effect to any arrangements made in pursuance of the provisions of the observation agreement relating to merchant shipping or to any further agreement amending or supplementing those provisions, and any such Order may contain provisions for the imposition by summary process or otherwise of penalties in respect of breaches of the Order and provisions for the amendment of this Act or any other enactment relating to merchant shipping.

(2) Any Order in Council made under this section may be varied or revoked by a subsequent Order in Council.

(3) Any Order in Council made under this section for giving effect to any further agreement amending or supplementing the observation agreement shall cease to have effect at the expiration of a period of twenty-eight days from the date when the Order is made, unless before the expiration of that period each House of Parliament has by resolution approved the Order, but without prejudice to the validity of anything previously done thereunder or the making of a new Order:

Provided that in reckoning any such period of twenty-eight days no account shall be taken of any time during which Parliament is dissolved or prorogued or during which the Commons House is adjourned for more than four days.

4. (1) This Act may be cited as the Merchant Shipping (Spanish Frontiers Observation) Act, 1937.

(2) This Act and the Merchant Shipping Acts, 1894 to 1936, shall be construed as one and may be cited together as the Merchant Shipping Acts, 1894 to 1937.

(3) For the purposes of this Act—

(a) references to the administrator at a place shall, in a case where there is no administrator at that place, be construed as references to the deputy administrator at that place;

(b) the expression "the authority" means such body as may be certified by the Board of Trade to be the body entrusted by the International Board for Non-Intervention in Spain with the functions of the authority under this Act or, if no such certificate is given, the said International Board;



(c) references to an owner of a ship shall include references to a charterer;

(d) the expression "Spanish territory" includes the Spanish zone of Morocco, but shall not, until such date as the Board of Trade may by order appoint, include the Canary Islands;

(e) the expression "waters adjacent to Spanish territory" means any part of the sea within ten sea miles from any point on the coast of any Spanish territory.

(4) This Act shall extend to all those parts of His Majesty's dominions and other countries to which the Act of 1936 extends.

(5) This Act shall come into force on such date as the Board of Trade may by order appoint, and different dates may be appointed in relation to different ships and different provisions of this Act.

(6) This Act shall continue in force until His Majesty by Order in Council is pleased to declare that it is no longer necessary or expedient that it should continue in force:

Provided that on the expiration of this Act subsection (2) of section thirty-eight of the Interpretation Act, 1889 (which relates to the effect of repeals), shall apply as if this Act had been repealed by another Act.

### III. THE MERCHANT SHIPPING (SPANISH FRONTIERS OBSERVATION) REGULATIONS, 1937, APRIL 16, 1937<sup>2</sup>

The Board of Trade by virtue of the powers conferred by subsection (8) of section I of the Merchant Shipping (Spanish Frontiers Observation) Act, 1937, hereby make the following regulations:

#### *Short Title, Commencement and Interpretation*

1. (1) These regulations may be cited as the Merchant Shipping (Spanish Frontiers Observation) Regulations, 1937, and shall come into force on the 20th day of April, 1937.

(2) In these regulations unless the context otherwise requires the following expressions have the meanings hereby respectively assigned to them, that is to say:

"the Act" means the Merchant Shipping (Spanish Frontiers Observation) Act, 1937;

"the authority," "the observation agreement," and "Spanish territory" have the same meaning as they have for the purposes of the Act;

"passenger ship" means a ship having accommodation for more than twelve passengers.

(3) The Interpretation Act, 1889, (a) [52 & 53 Vict. c. 63] applies to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

<sup>2</sup> *Statutory Rules and Orders*, 1937, No. 318. Merchant Shipping.

*Places for Embarkation of Observing Officers*

2. For the purposes of subsection (1) of section I of the Act the prescribed place for the embarkation of observing officers on a ship shall be, according to the voyage on which the ship is for the time being engaged, the place set out in the second column of the schedule to these regulations.<sup>3</sup>

*Places for Disembarkation of Observing Officers*

3. For the purposes of subsection (3) of section I of the Act the prescribed place for the disembarkation of observing officers from a ship shall be such one of the places set out in the second column of the schedule to these regulations as is nearest to the route which the master of the ship intends to follow after leaving Spanish territory.

*Subsistence for Observing Officers on Ships*

4. (1) The subsistence to be provided for an observing officer on a ship shall, in the case of a ship which is not a passenger ship, be equivalent to the subsistence provided for the master of the ship, and, in the case of a passenger ship, be equivalent to the subsistence provided either for a first class passenger, or if there is no accommodation classed as first class, for a passenger of the highest class for which subsistence is provided.

(2) The payment to be made by the authority in respect of the subsistence provided for an observing officer on a ship shall be:

(a) Five shillings for a day or part of a day on a ship which is not a passenger ship;

(b) Seven shillings and six pence for a day or part of a day on a passenger ship of less than seven thousand gross tons;

(c) Ten shillings for a day or part of a day on a passenger ship of, or of more than, seven thousand gross tons.

*Accommodation for Observing Officers on Ships*

5. The accommodation to be provided for an observing officer on a ship shall, in the case of a ship which is not a passenger ship, be equivalent to the accommodation provided for the mates of the ship, and, in the case of a passenger ship, equivalent to the accommodation provided for a first class passenger, or, if there is no accommodation classed as first class, for a passenger of the highest class for which accommodation is provided.

*Signals and Messages Required by Observing Officers*

6. The master of a ship on which an observing officer is carried shall cause such signals to be made, and, if the ship is fitted with a wireless telegraph installation, cause such messages to be sent by wireless telegraphy as

<sup>3</sup> For this schedule see Appendix VI: *Resolution relating to the Scheme of Observation of the Spanish Frontiers by Land and Sea, adopted by the International Non-Intervention Committee, March 8, 1937*, paragraph twelve, which is identical.

the observing officer may require for the purpose of enabling him to discharge his duties under the observation agreement, and shall accord to such messages the same priority as he would accord to service messages sent on his own behalf;

Provided that the master shall not be required—

(a) to cause any such message to be sent unless payment is first made for the message at the rate appropriate to an ordinary radio-telegram; or

(b) to cause any such signal to be made or any such message to be sent in code or in a foreign language unless the observing officer, upon request of the master, supplies an English translation.

*Payments in Respect of Tolls, Dues, etc.*

7. The authority shall pay to the owner of a ship in respect of which tolls, dues, rates or charges of any kind have been incurred by reason only of her entering or using a port solely for the purpose of embarking or disembarking observing officers, the amount of such tolls, dues, rates or charges on production of the receipts for the amount expended thereon, together with a declaration signed by the observing officers embarked or disembarked as the case may be, or, in the case of a ship which, having called at a port for the purpose of embarking observing officers, has been exempted by the administrator at that port from the provisions of subsection (1) of section I of the Act, a declaration signed by such administrator, to the effect that the ship called at the port solely for the purpose of embarking or disembarking observing officers;

Provided that, if the tolls, dues, rates or charges have been paid by the charterer of the ship, the authority shall pay the amount expended thereon to the charterer.

*Signal to be Displayed by Ships*

8. For the purposes of subsection (7) of section I of the Act the prescribed signal shall be a flag of the following character, that is to say, a triangular pennant showing two black balls on a white ground.

IV. THE MERCHANT SHIPPING (SPANISH FRONTIERS OBSERVATION) (AMENDMENT) REGULATIONS, 1937, JUNE 18, 1937<sup>4</sup>

Whereas the Board of Trade have by virtue of the powers conferred by the subsection (8) of section I of the Merchant Shipping (Spanish Frontiers Observation) Act, 1937 (hereinafter referred to as "the Act") made the Merchant Shipping (Spanish Frontiers Observation) Regulations, 1937 [S. R. & O. 1937, No. 318] (hereinafter referred to as "the Principal Regulations");

And whereas it is expedient to amend the Principal Regulations;

Now, therefore, the Board of Trade by virtue of the powers conferred by

<sup>4</sup> *Statutory Rules and Orders*, 1937, No. 594. Merchant Shipping.

the said subsection (8) of section I of the Act and of all other powers enabling them in that behalf hereby make the following regulations:

1. These regulations may be cited as the Merchant Shipping (Spanish Frontiers Observation) (Amendment) Regulations, 1937; and shall come into force on the 18th day of June, 1937.

2. The Principal Regulations shall have effect as if in the second column of the schedule thereto the words "or The Downs" were omitted and for the word "Cherbourg" there were substituted the words "Either Dover or Brest at the option of the Master."

#### V. THE MERCHANT SHIPPING (SPANISH FRONTIERS OBSERVATION) (AMENDMENT) (No. 2) REGULATIONS, 1937, SEPTEMBER 23, 1937<sup>5</sup>

Whereas the Board of Trade have by virtue of the powers conferred by subsection (8) of section I of the Merchant Shipping (Spanish Frontiers Observation) Act, 1937 (hereinafter referred to as "the Act") made the Merchant Shipping (Spanish Frontiers Observation) Regulations, 1937 [S. R. & O. 1937, No. 318] (hereinafter referred to as "the Principal Regulations") and the Merchant Shipping (Spanish Frontiers Observation) (Amendment) Regulations, 1937 [S. R. & O. 1937, No. 594];

And whereas it is expedient further to amend the Principal Regulations:

Now therefore the Board of Trade by virtue of the powers conferred by the said subsection (8) of section I of the Act and of all other powers enabling them in that behalf hereby make the following regulations.

1. These regulations may be cited as the Merchant Shipping (Spanish Frontiers Observation) (Amendment) (No. 2) Regulations, 1937, and shall come into force on the 1st day of October, 1937.

2. The Principal Regulations shall have effect as if the schedule to these regulations were substituted for the schedule to the Principal Regulations:

Provided that until the 15th day of October, 1937, the second column of the schedule so substituted shall have effect as if for the word "Falmouth," wherever that word occurs, there were substituted the word "Brest."

#### SCHEDULE

##### PRESCRIBED PLACES FOR THE EMBARKATION OF OBSERVING OFFICERS

<i>Description of Voyage</i>	<i>Prescribed Place</i>
A. Voyages to Spanish ports in the Straits of Gibraltar or voyages which involve passing through the Straits of Gibraltar before calling at any Spanish port.	Gibraltar.
B. Voyages to Spanish ports outside the Mediterranean not passing through the Mediterranean:	

<sup>5</sup> *Statutory Rules and Orders*, 1937, No. 858. Merchant Shipping.

### Description of Voyage

*Prescribed Place*

- |  |   |
|--|---|
| (1) Voyages through the English Channel from ports north of Dover, not involving a call at a Portuguese or French port before proceeding to a Spanish port.  | Dover.  |
| (2) Voyages as described in (1) but involving a call at a Portuguese port before proceeding to a Spanish port.   | Lisbon.   |
| (3) Voyages as described in (1) but involving a call at a French port before proceeding to a Spanish port.   | Either Dover or Falmouth or Le Verdon, at the option of the Master. |
| (4) Voyages from ports on the English Channel south of Dover (except ports between Cherbourg and Brest) not involving a call at a Portuguese or French port before proceeding to a Spanish port.                                       | Either Dover or Falmouth, at the option of the Master.              |
| (5) Voyages as described in (4) but involving a call at a Portuguese port before proceeding to a Spanish port.   | Lisbon.   |
| (6) Voyages as described in (4) but involving a call at a French port before proceeding to a Spanish port.   | Either Dover or Falmouth or Le Verdon, at the option of the Master. |
| (7) Voyages from ports in Ireland or ports on the west coast of Great Britain or from the northward via the west of Ireland or the Irish Sea, not involving a call at a Portuguese or French port before proceeding to a Spanish port. | Falmouth.   |
| (8) Voyages as described in (7) but involving a call at a Portuguese port before proceeding to a Spanish port.   | Lisbon.   |
| (9) Voyage as described in (7) but involving a call at a French port before proceeding to a Spanish port.  | Either Dover or Falmouth or Le Verdon, at the option of the Master. |
| (10) Voyages from ports between Cherbourg and Brest, or from Brest, not involving a call at a Portuguese or French port before proceeding to a Spanish port.   | Either Falmouth or Le Verdon, at the option of the Master.          |
| (11) Voyages as described in (10) but involving a call at a Portuguese port before proceeding to a Spanish port.   | Lisbon.   |

## THE SPANISH CIVIL STRIFE

<i>Description of Voyage</i>	<i>Prescribed Place</i>
(12) Voyages as described in (10) but involving a call at another French port before proceeding to a Spanish port.	Either Dover or Falmouth or Le Verdon, at the option of the Master.
(13) Voyages from French Atlantic or Biscayan ports south of Brest.	Le Verdon.
(14) Voyages from the west of longitude 15° W. or from the Atlantic from the southward of latitude 28° N.	Either Madeira or Gibraltar or Lisbon, at the option of the Master.
(15) Voyages from ports on the Atlantic seaboard of Morocco to Spanish ports south of Portugal.	Gibraltar.
(16) Voyages from ports on the Atlantic seaboard of Morocco to Spanish ports north of Portugal.	Lisbon.
(17) Voyages from ports in Portugal.	Lisbon.
C. Voyages to Spanish ports inside the Mediterranean passing through or originating in the Mediterranean:	
(1) Voyages westward through the Mediterranean or from ports in the Mediterranean east of longitude 12° E. not in either case involving a call for commercial reasons at Marseilles.	Palermo.
(2) Voyages as described in (1) but involving a call for commercial reasons at Marseilles.	Marseilles.
(3) Voyages from North African ports west of longitude 12° E.	Oran.
(4) Voyages from ports on the French or Italian coasts between longitude 12° E. and Marseilles, or from Marseilles, or from Corsica or Sardinia.	Marseilles.
(5) Voyages from French Mediterranean ports west of Marseilles.	Cette.

VI. THE MERCHANT SHIPPING (SPANISH FRONTIERS OBSERVATION)  
(APPOINTED DATES) ORDER, 1937, APRIL 19, 1937<sup>6</sup>

The Board of Trade by virtue of the powers conferred by subsection (5) of section 4 of the Merchant Shipping (Spanish Frontiers Observation) Act, 1937, hereby make the following Order.

<sup>6</sup> *Statutory Rules and Orders*, 1937, No. 366. Merchant Shipping.

*Short Title and Interpretation*

1. (1) This Order may be cited as the Merchant Shipping (Spanish Frontiers Observation) (Appointed Dates) Order, 1937.

(2) In this Order unless the context otherwise requires the following expressions have the meanings hereby respectively assigned to them, that is to say:

“the Act” means the Merchant Shipping (Spanish Frontiers Observation) Act, 1937.

“Spanish territory” has the same meaning as it has for the purposes of the Act.

*Appointed Dates.*

2. Subject as hereinafter provided the appointed date on which the provisions of the Merchant Shipping (Spanish Frontiers Observation) Act, 1937, shall come into force shall be the 19th day of April, 1937, at midnight Greenwich Mean Time.

Provided that, in relation to a ship fitted with a wireless telegraph installation which has before the time hereinbefore specified on a voyage to a port or place in Spanish territory passed the place prescribed under the Merchant Shipping (Spanish Frontiers Observation) Regulations, 1937 [S. R. & O., 1937, No. 318] for the purpose of embarking observing officers, or in relation to a ship not fitted with a wireless telegraph installation which on any such voyage has before the time hereinbefore specified left its last port of call on its way to its first port of call in Spanish territory, the appointed date on which the provisions of Section I of the Act shall come into force shall be the date on which any such ship begins the next following voyage to a port or place in Spanish territory.

VII. MERCHANT SHIPPING (SPANISH FRONTIERS OBSERVATION) (NAVAL OBSERVATION ZONES) ORDER, 1937, APRIL 19, 1937<sup>7</sup>

His Majesty's Principal Secretary of State for Foreign Affairs by virtue of the powers conferred by Section 2 of the Merchant Shipping (Spanish Frontiers Observation) Act, 1937 (hereinafter referred to as “the Act”) hereby makes the following Order.

1. (1) This Order may be cited as the Merchant Shipping (Spanish Frontiers Observation) (Naval Observation Zones) Order, 1937, and shall come into force on the 20th day of April, 1937.

(2) In this Order unless the context otherwise requires the expressions “the observation agreement” and “waters adjacent to Spanish territory” have the same meaning as they have for the purposes of the Act.

2. It is declared that the Powers specified in the second column of the Schedule to this Order<sup>8</sup> have been entrusted under the observation agree-

<sup>7</sup> *Statutory Rules and Orders*, 1937, No. 430. Merchant Shipping.

<sup>8</sup> For this schedule see Appendix VI, paragraphs 26 and 28.

ment with observation duties in the naval observation zones within the waters adjacent to Spanish territory specified in the first column of that Schedule.

3. It is further declared that the signal required by the observation agreement to be displayed by ships of war engaged in observation duties in the waters adjacent to Spanish territory is the Fishery Protection Flag, that is to say, a triangular flag with blue and yellow quarters, blue being in the upper left-hand quarter.

VIII. THE MERCHANT SHIPPING (SPANISH FRONTIERS OBSERVATION) (NAVAL OBSERVATION ZONES) (REVOCATION) ORDER, 1937, OCTOBER 12, 1937<sup>9</sup>

Whereas His Majesty's Principal Secretary of State for Foreign Affairs by virtue of the powers conferred by Section 2 of the Merchant Shipping (Spanish Frontiers Observation) Act, 1937 (hereinafter referred to as "the Act") made the Merchant Shipping (Spanish Frontiers Observation) (Naval Observation Zones) Order, 1937 [S. R. & O., 1937, No. 430] (hereinafter referred to as "the Naval Observation Zones Order").

And whereas it is provided by subsection (3) of Section 2 of the Act that any Order made under that section may be revoked or varied by a subsequent Order made by the Secretary of State.

And whereas it is expedient to revoke the Naval Observation Zones Order.

Now, therefore, His Majesty's Principal Secretary of State for Foreign Affairs by virtue of the powers hereinbefore referred to hereby makes the following Order:

1. The Naval Observation Zones Order is hereby revoked.
2. This Order may be cited as The Merchant Shipping (Spanish Frontiers Observation) (Naval Observation Zones) (Revocation) Order, 1937.

IX. THE MERCHANT SHIPPING (SPANISH FRONTIERS OBSERVATION) (FOCAL AREAS) ORDER, 1937, APRIL 23, 1937<sup>10</sup>

At the Court at Windsor Castle, the 23rd day of April, 1937.

PRESENT

The King's Most Excellent Majesty in Council

Whereas by subsection (1) of section 3 of the Merchant Shipping (Spanish Frontiers Observation) Act, 1937 [1 Edw. 8 & 1 Geo. 6 c. 19], it is provided that His Majesty may make such Orders in Council as appear to Him to be necessary or expedient for the purpose of giving effect to any arrangements made in pursuance of the provisions of the observation agreement relating to merchant shipping and that any such Order may contain provi-

<sup>9</sup> *Statutory Rules and Orders*, 1937, No. 962. Merchant Shipping.

<sup>10</sup> *Statutory Rules and Orders*, 1937, No. 384. Merchant Shipping.



sions for the imposition by summary process or otherwise of penalties in respect of breaches of the Order:

And whereas by the observation agreement it is provided that subject to the prior approval of the International Committee that Powers undertaking naval observation may establish in the approaches to some or all of the zones entrusted to them under the observation agreement focal areas through which ships which are subject to the observation agreement and which are proceeding to ports within those zones would be required to pass:

And whereas the International Committee by a resolution dated the 15th day of April, 1937, approved arrangements proposed by the Government of the German Reich for the establishment of focal areas within the zone entrusted to such Government:

And whereas it appears to His Majesty to be necessary and expedient to give effect to such arrangements in relation to ships affected by the Act:

Now, therefore, His Majesty, in pursuance of the powers conferred on Him by the said subsection (1) of section 3 of the Act is pleased by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows:

1. (1) This Order may be cited as the Merchant Shipping (Spanish Frontiers Observation) (Focal Areas) Order, 1937, and shall commence and have effect on such day as may be fixed by notification in the London Gazette by the President of the Board of Trade [The date thus fixed was May 9, 1937: *see* London Gazette, April 30, 1937, p. 2802].

(2) In this Order unless the context otherwise requires the following expressions have the meanings hereby respectively assigned to them, that is to say:

"the Act" means the Merchant Shipping (Spanish Frontiers Observation) Act, 1937;

"the Act of 1936," "the observation agreement," and "Spanish territory" have the same meanings as they have for the purpose of the Act;

"the International Committee" means the International Committee for the application of the agreement regarding non-intervention in Spain.

(3) The Interpretation Act, 1889 [52 & 53 Vict. c. 63], applies to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

2. Any ship to which the Act of 1936 applies and which is bound to a port or place in Spain between Cape de Gata and Cape Oropesa shall pass within a distance of one and a half sea miles of one of the points set out in the schedule to this Order, unless, after that ship has left her last port of call outside Spanish territory on her voyage to such port or place in Spain, an officer of a ship of war which fulfils the conditions specified in section 2 of the Act has, to the knowledge of the master of the ship, verified the identity of the ship and has ascertained whether or not observing officers are on board the ship.

3. If any ship to which the Act of 1936 applies fails to comply with the

provisions of the foregoing Article the master of the ship shall be liable to a fine not exceeding one hundred pounds.

4. This Order shall extend to all those parts of His Majesty's dominions and other countries to which the Act of 1936 extends.

#### SCHEDULE

1. A point 180°, ten sea miles, from Escombrera Island Light, Cartagena.
2. A point 090°, ten sea miles, from the Group Occulting Light at the southern end of the breakwater, Alicante.
3. A point 090°, ten sea miles, from Group Flashing Light at the end of the Dique del Norte, Valencia.

#### X. THE MERCHANT SHIPPING (SPANISH FRONTIERS OBSERVATION) (FOCAL AREAS) (REVOCATION) ORDER, 1937, OCTOBER 22, 1937<sup>11</sup>

At the Court at Buckingham Palace the 22nd day of October, 1937.

#### PRESENT,

The King's Most Excellent Majesty in Council.

Whereas His Majesty, in Council, was pleased to make the Merchant Shipping (Spanish Frontiers Observation) (Focal Areas) Order, 1937 [S. R. & O., 1937, No. 384] (hereinafter referred to as the "Focal Areas Order"):

And whereas it is provided by subsection (2) of section three of the Merchant Shipping (Spanish Frontiers Observation) Act, 1937 [1 Edw. 8 & 1 Geo. 6. c. 19], that any Order in Council made under the said Act may be varied or revoked by a subsequent Order in Council:

And whereas it is expedient to revoke the Focal Areas Order:

Now, therefore, His Majesty, by and with the advice of His Privy Council, is pleased to order, and it is hereby ordered, as follows:

1. The Focal Areas Order is hereby revoked as from the commencement of this Order;

2. (1) This Order may be cited as the Merchant Shipping (Spanish Frontiers Observation) (Focal Areas) (Revocation) Order, 1937;

(2) This Order shall extend to all those parts of His Majesty's dominions and other countries to which the Merchant Shipping (Carriage of Munitions to Spain) Act, 1936 [1 Edw. 8 & 1 Geo. 6. c. 1] extends;

(3) This Order shall come into operation on the 22nd day of October, nineteen hundred and thirty-seven;

(4) The Interpretation Act, 1889 [52 & 53 Vict. c. 63] as amended by any subsequent enactment, shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

<sup>11</sup> *Statutory Rules and Orders*, 1937, No. 953. Merchant Shipping.

## 6

## CZECHOSLOVAKIA

No measures adopted.

## 7

## DENMARK

I. LAW CONCERNING MEASURES TO PREVENT PARTICIPATION IN THE CIVIL WAR IN SPAIN, FEBRUARY 26, 1937

(See Appendix V—Denmark)

II. ACT CONCERNING THE ESTABLISHMENT OF A SYSTEM OF OBSERVATION OF SHIPS ON ACCOUNT OF THE CIVIL WAR IN SPAIN, APRIL 16, 1937<sup>1</sup>

We, Christian the Tenth, . . .

*hereby make known:* The Rigsdag have passed and We have provided the following Act with Our Assent:

## SECTION I

The Minister for Commerce, Industry and Shipping is authorized, in conformity with the international agreements regarding non-intervention in Spain, to lay down:

1. that every Danish ship proceeding to or leaving Spain shall call at further specified ports to embark and disembark observing officers who shall be entitled to be stationed on board the ship and, in a further specified manner, control the cargo, crew and passengers of the ship,

2. that the shipmaster shall allow the naval vessels of further specified countries to ascertain whether there are observing officers on board, etc.,

3. that no Danish ship must carry arms or other war material to, or land such material in, Spain, and

4. that the shipmaster—irrespective of the provisions contained in section 51, subsection 2, of the Seamen's Act of May 1st, 1923, shall prohibit any members of the crew to go ashore in Spain, unless it is required in the service of the ship.

## SEC. 2

No ship must be cleared from a Danish customs territory before the police has ascertained that the ship has on board no passengers who are not provided with the special permission to go to Spain, as dealt with in section 2 of Act No. 32 of February 26th, 1937, concerning measures against taking part in the civil war in Spain, and has given a report to that effect to the customs authorities.

At the departure of the ship from the Free Port of Copenhagen it is the

<sup>1</sup> English text supplied by the Government of Denmark.

duty of the police to take the necessary steps to secure that the ships do not leave for Spain before the necessary inspection of the passengers has been made in accordance with the above provisions.

#### SEC. 3

The Minister for Commerce, Industry, and Shipping is authorized to issue the necessary regulation for giving effect to this Act.

#### SEC. 4

For the purposes of this Act Spain shall mean Spain and the Spanish possessions including Spanish Morocco.

#### SEC. 5

Any person committing an offence under the provisions of this Act or the regulations issued in pursuance of same shall be liable to imprisonment for a period of up to 3 months or, in the case of extenuating circumstances, to a fine.

#### SEC. 6

The time for the coming into operation of this Act shall be fixed by Royal Ordinance.

This Act shall be abolished from the day when the Spanish civil war ceases, unless it may be provided by Royal Ordinance that the Act shall cease to operate at an earlier date.

All and everybody to comply with the provisions given above.

### III. NOTIFICATION CONCERNING OBSERVATION OF SHIPS ON ACCOUNT OF THE CIVIL WAR IN SPAIN, APRIL 17, 1937<sup>2</sup>

In pursuance of Act of April 16th, 1937, relating to observation of ships on account of the civil war in Spain, the following provisions are hereby laid down.

#### SECTION I

Sub-section (1). Every Danish ship proceeding to Spain shall, in pursuance of the international agreement regarding non-intervention in Spain, before the ship proceeds to a Spanish port call at an observation port to take on board a controlling officer or officers in accordance with the directions of the Administrator or Deputy Administrator in charge of the port concerned.

Sub-section (2). The controlling officers shall, as required by the Administrator or Deputy Administrator in charge of the port in which the controlling officer embarks, be disembarked either in the observation port which is nearest the route which the master intends to follow after leaving Spanish waters, or at any other port which does not entail more than fifty sea miles additional steaming.

<sup>2</sup> English text supplied by the Government of Denmark.

## SEC. 2

Sub-section (1). The controlling officer, as dealt with in section 1 above, shall be embarked in ports or roads (observation ports) in accordance with the below rules:

A. Ships which before calling at a Spanish port are passing through the Straits of Gibraltar shall—irrespective of the port of departure and the direction in which the ship is proceeding—call at *Gibraltar* as the controlling port.

B. As regards ships which are not covered by "A" above, the following ports shall be observation ports:

- (1) *Dover* or *The Downs* for ships which are passing through the English Channel to a Spanish port from a port north of Dover;
- (2) *Cherbourg* for ships (other than those covered by (1) above) proceeding from a Channel port south of Dover, except ports between Cherbourg and Brest;
- (3) *Brest* for ships proceeding from the Irish Free State, Northern Ireland, the Irish Channel and Bristol Channel or from a port between Cherbourg and Brest;
- (4) *Le Verdon* for ships (other than those covered by (A) above) proceeding from a French Atlantic or Biscayan port south of Brest;
- (5) *Palermo* for ships passing the Mediterranean or proceeding from a port in the Mediterranean east of Longitude  $12^{\circ}$  East, provided that ships which for the purpose of loading or discharging or for embarking or disembarking passengers are proceeding to *Marseilles*, may use that port as their observation port;
- (6) *Oran* in respect of ships (not covered by (5) above) proceeding from a North African port west of Longitude  $12^{\circ}$  East;
- (7) *Marseilles* for ships (not covered by (5) above) proceeding from French Mediterranean or Italian Mediterranean ports between Marseilles and Longitude  $12^{\circ}$  East or from Corsica or Sardinia;
- (8) *Cette* for ships (not covered by (5) above) proceeding from a French Mediterranean port west of Marseilles;
- (9) *Madeira*, *Gibraltar* or *Lisbon* for ships approaching from the Atlantic west of Longitude  $15^{\circ}$  West or from the southward of Latitude  $28^{\circ}$  North;
- (10) *Lisbon* for ships coming from a Portuguese port and which in order to call at a Spanish port north of Portugal, come from a port on the Atlantic seaboard of Morocco;
- (11) *Gibraltar* for ships coming from a port on the Atlantic seaboard of Morocco in order to proceed to a Spanish port south of Portugal.

Sub-section (2). The Administrator or Deputy Administrator in charge of the observation port concerned embarks the observing officer. If after a period of four hours after the time when the master or agent of the ship concerned shall have reported the arrival of the ship to the Administrator or

Deputy Administrator concerned, no observing officer has been stationed on board, the master is entitled to obtain from the Administrator or Deputy Administrator in charge of the port a document certifying that the ship has duly called at the port, but that no observing officer was available to be embarked in his ship.

Sub-section (3). In special cases when it is deemed necessary in the interest of the shipping trade the Administrator or Deputy Administrator in one of the observation ports The Downs (or Dover), Cherbourg, Lisbon, Gibraltar, Marseilles, Palermo or Madeira may make special arrangements for the ships to embark observing officers on board in other ports than those stated above.

Sub-section (4). As regards ships engaged in regular trade with Spanish ports, the owner of the ships may make arrangements with the International Spanish Non-Intervention Board for observing officers to be stationed on board their vessels for a definite time, the additional expenses involved to be defrayed by the shipowner concerned.

### SEC. 3

Sub-section (1). It is the duty of the master of every ship having an observing officer on board to render the observing officer all necessary assistance to enable him to discharge his duties.

Sub-section (2). In particular it is the duty of the shipmaster :

- (a) to give the observing officer—when at any convenient time during the voyage he requires it—all necessary information as to cargo carried and consigned to Spanish ports, and afford him facilities for inspecting the papers relating thereto,
- (b) to give the observing officers facilities, at any convenient time, to obtain all necessary information about the passengers and crew and—in the presence of the master or in that of a mate nominated by him—to interrogate the passengers, ship's officers and crew and to examine the passports of passengers and the identity papers of the officers and crew,
- (c) to accord to the observing officer facilities for being present at the unloading or the disembarkation of passengers in a Spanish port,
- (d) to have opened, upon demand of the observing officer, for inspection before unloading any package which the observing officer has reasonable grounds for suspecting to contain war material \* sent in contravention of the Non-Intervention Agreement, and to undertake the necessary unpacking, repacking and sealing up, and
- (e) to grant the observing officer the same priority for telephone and telegraph services as are granted to the service messages of the master.

### SEC. 4

The master of a Danish ship proceeding to a Spanish port and which is within ten sea miles from the nearest point on the Spanish coast, shall allow

\* The Annex hereto shows the classes of arms and war material covered by the Non-Intervention Agreement. Cf. *postea*.

the officers in command of naval vessels belonging to France, Italy, Great Britain or Germany to verify the identity of the Danish ship and to ascertain whether the ship has called at the observation port and has embarked an observing officer or having the document prescribed in section 2, sub-section (2). When a naval vessel for the purpose of exercising the observation dealt with above, hails a Danish ship which is proceeding to a Spanish port and is within a distance of 10 sea miles from the nearest point on the Spanish coast, it is the duty of the master without delay to undertake such manoeuvres as may facilitate the observation, and, if required, facilitate the embarkation of the persons from the naval vessel who are to undertake the observations and who are to be given facilities for examining the Certificate of Registry of the ship and other ship's papers.

#### SEC. 5

Sub-section (1). Ships which in pursuance of section 1 are to have observing officers on board shall be under obligation to provide accommodation for the observing officer or officers, equivalent to that normally provided in passenger ships for first class passengers (the highest class in the ship), and in other ships equivalent to the accommodation normally provided for mates in Danish ships in the trade concerned.

Sub-section (2). The observing officer is entitled to the same messing as is provided for the master or first class passengers (the highest class in the ship). Payment for the messing will be made in accordance with special rules to be fixed by the International Committee for the application of the Agreement regarding non-intervention in Spain.

Sub-section (3). The observing officer shall in all respects be carried on the same conditions with regard to liability for life and property as are passengers of the vessel in question.

#### SEC. 6

Danish vessels must not carry arms or other war material to, or land such material in, Spain.

#### SEC. 7

The master of any Danish ship, when in a Spanish port or in Spanish territorial water, shall—irrespective of the provisions contained in section 51, sub-section 2 of The Seamen's Act of May 1st, 1923—prohibit the ship's crew to go ashore in Spain except when it is required in the service of the ship.

#### SEC. 8

Sub-section (1). For the purposes of this Notification "Spain" shall mean Spain and the Spanish possessions, including Spanish Morocco.

Sub-section (2). The provisions of this Notification shall not, for the present, apply to ports in the Canary Islands.

## SEC. 9

This Notification shall come into operation on April 20th, 1937.

The Ministry for Commerce, Industry and Shipping, April 17th, 1937.

## ANNEX

*Arms and War Material Covered by the Non-Intervention Agreement,  
Cf. Section 6 of the Notification*

- (1) Rifles and carbines (excluding sporting arms).
- (2) Bayonets, swords, and lances (armes blanches).
- (3) Machine guns, automatic rifles and machine-pistols of all calibres, and their mountings.
- (4) Revolvers and automatic pistols.
- (5) Guns, howitzers and mortars of all calibres and their mountings.
- (6) Ammunition for the arms enumerated under Schedules (1), (3) and (4) above, and filled and unfilled projectiles for the arms enumerated under Schedule (5) above.
- (7) Grenades, bombs, torpedoes and mines, filled or unfilled and apparatus for their use or discharge.
- (8) Tanks, armoured vehicles; armour plate of all kinds.
- (9) Flame throwers and all other projectors used for chemical or incendiary warfare.
- (10) Mustard gas, lewisite, ethyldichlorarsine, methyldichlorarsine, and all other products destined for chemical or incendiary warfare.
- (11) Powder for war purposes and explosives.
- (12) Aircraft, assembled or dismantled, and aero-engines, propellers or air-screws, fuselages, aerial gunmounts and frames, hulls, tail units and undercarriage units.
- (13) Vessels of war of all kinds, including aircraft-carriers and submarines.
- (14) Component parts of arms and munitions.

IV. NOTIFICATION DEALING WITH ADDITIONS TO NOTIFICATION No. 105 OF APRIL 17TH, 1937, CONCERNING OBSERVATION OF SHIPS ON ACCOUNT OF THE CIVIL WAR IN SPAIN, MAY 3, 1937<sup>3</sup>

*(Supplement I)*

Pursuant to Act No. 104 of April 16th, 1937, relating to observation of ships on account of the civil war in Spain, it is hereby laid down:

## SECTION I

To section 4 of Notification of April 17th, 1937, concerning observation of ships on account of the civil war in Spain, the following sub-section to be added:

"In the zone in which the observation is to be carried out by German

<sup>3</sup> English text supplied by the Government of Denmark.



warships (southern coast of Spain from Cape de Gata to Cape Oropesa) the following focal points have been established:

(a) *Cartagena Focal Point*:

180°, 10 sea miles, from Escombrera Island light,

(b) *Alicante Focal Point*:

90°, 10 sea miles, from the group-occulting light at the southern end of the breakwater,

(c) *Valencia Focal Point*:

90°, 10 sea miles, from the group flashing light at the end of the Dique del Norte.

Ships which are to call at a port situated in the said zone shall pass one of the above focal points at a distance of not more than 1½ sea miles to submit to the prescribed observation, unless such observation, before the arrival of the ship to the focal area, has already been exercised by German warships or by other warships exercising maritime observation along the Spanish coasts.

As to the selection of the focal area the following is to be observed:

(a) Ships arriving from the northward or southward following a course along the Spanish coast within 10 sea miles of this, should call at the northern or southern focal area, respectively,

(b) other ships should call at the focal area which is situated nearest to the route to the harbour for which they are bound."

#### SEC. 2

Section 8, sub-section 2, of the above Notification shall be altered to read as follows:

"The provisions of this Notification shall not for the present apply to ports in the Canary Islands and Fernando Po, and to Ifni, Rio de Oro and Muni on the west coast of Africa."

#### SEC. 3

The provisions of section 1 of this Notification shall come into operation on May 10th, 1937. The provisions of section 2 shall come into operation immediately.

The Ministry for Commerce, Industry and Shipping, May 3rd, 1937.

#### V. NOTIFICATION DEALING WITH ADDITIONS TO NOTIFICATION NO. 105 OF APRIL 17TH, 1937, CONCERNING OBSERVATION OF SHIPS ON ACCOUNT OF THE CIVIL WAR IN SPAIN, MAY 12, 1937<sup>4</sup>

##### *(Supplement II)*

Pursuant to Act No. 104 of April 16th, 1937, relating to observation of ships on account of the civil war in Spain, it is hereby laid down:

<sup>4</sup> English text supplied by the Government of Denmark.

## THE SPANISH CIVIL STRIFE

## SECTION I

Section 2, sub-section 1, B, (1), of Notification of April 17th, 1937, concerning observation of ships on account of the civil war in Spain to be altered to read as follows:

*"Dover* for ships which are passing through the English Channel to a Spanish port from ports north of Dover."

Section 2, sub-section 3, of the above Notification to be altered to read as follows:

*"In special cases when it is deemed necessary in the interest of the shipping trade the Administrator or Deputy Administrator in one of the observation ports Dover, Cherbourg, Lisbon, Gibraltar, Marseilles, Palermo or Madeira may make special arrangements for the ships to embark observing officers on board in other ports than those stated above."*

## SEC. 2

This Notification shall come into operation immediately.

The above is hereby brought to the knowledge of all concerned.

The Ministry for Commerce, Industry and Shipping, May 12th, 1937.

VI. NOTIFICATION DEALING WITH ADDITIONS TO NOTIFICATION NO. 105 OF APRIL 17TH, 1937, CONCERNING OBSERVATION OF SHIPS ON ACCOUNT OF THE CIVIL WAR IN SPAIN, JUNE 19, 1937<sup>5</sup>

*(Supplement III)*

Pursuant to Act No. 104 of April 16th, 1937, concerning the establishment of a system of observation of ships on account of the civil war in Spain, it is hereby laid down:

## SECTION I

Section 2, sub-section 1, B, (2), of the Notification dated April 17th, 1937, concerning observation of ships on account of the civil war in Spain to be altered to read as follows:

*"Dover or Brest* at the ship's own option for ships (other than those covered by (1) above) proceeding from a Channel port south of Dover, except port between Cherbourg and Brest;"

The word "Cherbourg" in sub-section (3) of the same section to be deleted.

## SEC. 2

This Notification shall come into operation immediately.

The above is hereby brought to the knowledge of all concerned.

The Ministry for Commerce, Industry and Shipping, June 19th, 1937.

<sup>5</sup> English text supplied by the Government of Denmark.

VII. NOTIFICATION CONCERNING OBSERVATION OF SHIPS ON ACCOUNT OF THE CIVIL WAR IN SPAIN, SEPTEMBER 30, 1937<sup>6</sup>

In pursuance of Act No. 104 of April 16th, 1937, relating to observation of ships on account of the civil war in Spain, the following provisions are hereby laid down:

## SECTION I

Sub-section (1). Every Danish ship proceeding to Spain shall, in pursuance of the international agreement regarding non-intervention in Spain, before the ship proceeds to a Spanish port call at an observation port to take on board a controlling officer or officers in accordance with the directions of the Administrator or Deputy Administrator in charge of the port concerned.

Sub-section (2). The controlling officers shall, as required by the Administrator or Deputy Administrator in charge of the port in which the controlling officer embarks, be disembarked either in the observation port which is nearest the route which the master intends to follow after leaving Spanish waters, or at any other port which does not entail more than fifty sea miles additional steaming.

## SEC. 2

Sub-section (1). The controlling officer, as dealt with in section 1 above, shall be embarked in ports or roads (observation ports) in accordance with the below rules:

- A. Ships which before calling at a Spanish port are passing through the Straits of Gibraltar shall—irrespective of the port of departure and the direction in which the ship is proceeding—call at *Gibraltar* as the controlling port.
- B. As regards ships which are not covered by "A" above, the following ports shall be observation ports:
  - (1) *Dover* for ships (other than those covered by (12) and (13) below) which are passing through the English Channel to a Spanish port from a port north of Dover;
  - (2) *Dover* or *Falmouth* \* in the ship's own option for ships (other than those covered by (1) above, and (12), (13) and (14) below) proceeding from a Channel port south of Dover;
  - (3) *Falmouth* \* for ships (other than those covered by (12) and (13) below) proceeding from the Irish Free State, the west coast of Scotland, Northern Ireland, the Irish Channel and Bristol Channel;
  - (4) *Le Verdon* for ships (other than those covered by (1) above) proceeding from a French Atlantic or Biscayan port south of Brest;
  - (5) *Palermo* for ships passing the Mediterranean or proceeding from a port in the Mediterranean east of longitude 12° East, provided

<sup>6</sup> English text supplied by the Government of Denmark.

\* From October 1 to October 14, 1937, both days included, Brest shall take the place of Falmouth as observation port.

## THE SPANISH CIVIL STRIFE

that ships which for the purpose of loading or discharging or for embarking or disembarking passengers are proceeding to *Marseilles*, may use that port as their observation port;

- (6) *Oran* in respect of ships (not covered by (5) above) proceeding from a North African port west of longitude  $12^{\circ}$  East;
- (7) *Marseilles* for ships (not covered by (5) above) proceeding from French Mediterranean or Italian Mediterranean ports between *Marseilles* and longitude  $12^{\circ}$  East or from Corsica or Sardinia;
- (8) *Cette* for ships (not covered (5) above) proceeding from a French Mediterranean port west of *Marseilles*;
- (9) *Madeira*, *Gibraltar* or *Lisbon* for ships approaching from the Atlantic west of longitude  $15^{\circ}$  West or from the southward of latitude  $28^{\circ}$  North;
- (10) *Lisbon* for ships coming from a Portuguese port and which in order to call at a Spanish port north of Portugal, come from a port on the Atlantic seaboard of Morocco;
- (11) *Gibraltar* for ships coming from a port on the Atlantic seaboard of Morocco in order to proceed to a Spanish port south of Portugal;
- (12) *Lisbon* for ships which before calling at a Spanish port call at a Portuguese port on voyages—
  - (a) through the English Channel from a port north of Dover,
  - (b) from a Channel port south of Dover,
  - (c) from the Irish Free State, Northern Ireland, the west coast of Scotland, the Irish Channel and Bristol Channel, or
  - (d) from ports between Cherbourg and Brest;
- (13) *Dover*, *Falmouth* \* or *Le Verdon*, in the ship's own option, for ships which before calling at a Spanish port call at a French port on voyages—
  - (a) through the English Channel from a port north of Dover,
  - (b) from a Channel port south of Dover,
  - (c) from the Irish Free State, Northern Ireland, the west coast of Scotland, the Irish Channel and Bristol Channel, or
  - (d) from ports between Cherbourg and Brest;
- (14) *Falmouth* \* or *Le Verdon*, in the ship's own option for ships (not covered by (12) and (13) above) proceeding from ports between Cherbourg and Brest.

Sub-section (2). The Administrator or Deputy Administrator in charge of the observation port concerned embarks the observing officer. If after a period of four hours after the time when the master or agent of the ship concerned shall have reported the arrival of the ship to the Administrator or Deputy Administrator concerned, no observing officer has been stationed on board, the master is entitled to obtain from the Administrator or Deputy Administrator in charge of the port a document certifying that the ship has

\* From October 1 to October 14, 1937, both days included, Brest shall take the place of Falmouth as observation port.

duly called at the port, but that no observing officer was available to be embarked in his ship.

Sub-section (3). In special cases when it is deemed necessary in the interest of the shipping trade the Administrator or Deputy Administrator in one of the observation ports Dover, Lisbon, Gibraltar, Marseilles, Palermo or Madeira may make special arrangements for the ships to embark observing officers on board in other ports than those stated above.

Sub-section (4). As regards ships engaged in regular trade with Spanish ports, the owner of the ships may make arrangements with the International Spanish Non-Intervention Board for observing officers to be stationed on board their vessels for a definite time, the additional expenses involved to be defrayed by the shipowner concerned.

### SEC. 3

Sub-section (1). It is the duty of the master of every ship having an observing officer on board to render the observing officer all necessary assistance to enable him to discharge his duties.

Sub-section (2). In particular it is the duty of the ship-master:

- (a) to give the observing officer—when at any convenient time during the voyage he requires it—all necessary information as to the cargo carried and consigned to Spanish ports, and afford him facilities for inspecting the papers relating thereto,
- (b) to give the observing officers facilities, at any convenient time, to obtain all necessary information about the passengers and crew and—in the presence of the master or in that of a mate nominated by him—to interrogate the passengers, ship's officers and crew and to examine the passports of passengers and the identity papers of the officers and crew,
- (c) to accord to the observing officer facilities for being present at the unloading or the disembarkation of passengers in a Spanish port,
- (d) to have opened, upon demand of the observing officer, for inspection before unloading, any package which the observing officer has reasonable grounds for suspecting to contain war material sent in contravention of the Non-Intervention Agreement, and to undertake the necessary unpacking, repacking and sealing up, and
- (e) to grant the observing officer the same priority for telephone and telegraph services as are granted to the service messages of the master.

### SEC. 4

Sub-section (1). Ships which in pursuance of section 1 are to have observing officers on board shall be under obligation to provide accommodation for the observing officer or officers, equivalent to that normally provided in passenger ships for first class passengers (the highest class in the ship), and in other ships equivalent to the accommodation normally provided for mates in Danish ships in the trade concerned.

Sub-section (2). The observing officer is entitled to the same messing as is provided for the master or first class passengers (the highest class in the

ship). Payment for the messing will be made in accordance with special rules to be fixed by the International Committee for the application of the Agreement regarding non-intervention in Spain.

Sub-section (3). The observing officer shall in all respects be carried on the same conditions with regard to liability for life and property as are passengers on the vessel in question.

#### SEC. 5

Danish vessels must not carry arms or other war material to, or land such material in, Spain.

#### SEC. 6

The master of any Danish ship, when in a Spanish port or in Spanish territorial waters, shall—irrespective of the provisions contained in section 51, sub-section 2 of The Seamen's Act of May 1st, 1923—prohibit the ship's crew to go ashore in Spain, except when it is required in the service of the ship.

#### SEC. 7

Sub-section (1). For the purposes of this Notification "Spain" shall mean Spain and the Spanish possessions including Spanish Morocco.

Sub-section (2). The provisions of this Notification shall not, for the present, apply to ports in the Canary Islands, Fernando Po, Ifni, Rio de Ora and Rio Muni on the west coast of Africa.

#### SEC. 8

This Notification shall come into operation on October 1st, 1937. At the same time all previous Notifications concerning observation of ships on account of the civil war in Spain shall cease to have effect.

The above is hereby made known.

The Ministry for Commerce, Industry and Shipping, September 30th, 1937.

### 8

## ESTONIA

### DECREE LAW REGARDING CONTROL OF SHIPS PROCEEDING TO SPAIN, MARCH 19, 1937<sup>1</sup>

#### I

#### CHAPTER I

#### *Obligation on Entering International Control Ports*

1. Estonian merchant ships proceeding to Spain or the Spanish Possessions, or to the Spanish Zone in Morocco, shall embark at one of the ports

<sup>1</sup> Published in the *State Gazette*, March 25, 1937. English text supplied by the British Foreign Office through the courtesy of the Department of State, Washington.

specified below the Observing Officer appointed by the International Non-Intervention Committee, as set out below.

2. Merchant ships passing in either direction through the Straits of Gibraltar before calling at any Spanish port shall call at Gibraltar.

3. Merchant ships proceeding to Spanish ports but not passing through the Straits of Gibraltar shall call at the following Observation Ports:

(1) If the ship is passing through the English Channel on her way to a Spanish port from a port lying to the north of Dover, she will call either at Dover or at the Downs;

(2) If the ship proceeds to a Spanish port from a Channel port south of Dover, she will call at Cherbourg;

(3) If the ship is proceeding from the Irish Free State or from Northern Ireland or from the Irish and Bristol Channels or from a port between Cherbourg and Brest, she will call at Brest;

(4) If the ship proceeds to a Spanish port from a French Atlantic or Biscayan port south of Brest, she will call at Le Verdon;

(5) If the ship is approaching westward through the Mediterranean or from a port in the Mediterranean, East of Longitude  $12^{\circ}$  East, she shall call at Palermo, unless for commercial reasons, she is in any case proceeding to Marseilles, in which case it shall be permitted to embark Observing Officers at that port;

(6) If the ship proceeds to a Spanish port from a North African port west of Longitude  $12^{\circ}$  East, she will call at Oran;

(7) If the ship proceeds to a Spanish port from a port on the French or Italian Coasts between Marseilles and Longitude  $12^{\circ}$  East, or from Corsica or Sardinia, she will call at Marseilles;

(8) If the ship proceeds to a Spanish port from a French Mediterranean port west of Marseilles, she will call at Cette;

(9) If the ship is approaching from the west of Longitude  $15^{\circ}$  West, or is approaching in the Atlantic from the southward of Latitude  $28^{\circ}$  North, she will call at one of the following ports, viz., Madeira, or Gibraltar, or Lisbon;

(10) If the ship is coming from a port on the Atlantic seaboard of Morocco, she will call at Gibraltar, or, in the case of ships proceeding to Spanish ports north of Portugal, at Lisbon;

(11) If the ship is coming from a Portuguese port, she will call at Lisbon.

4. The obligations specified in the foregoing paragraphs do not apply to those Merchant ships, whose port of destination or port of departure is situated on the Canary Islands.

5. The Observation Ports which are to be regarded as principal Observation Ports within the meaning of this Law are the following:

The Downs (or Dover)	Marseilles
Cherbourg	Palermo
Lisbon	Madeira
Gibraltar	

The Administrators of the International Non-Intervention Committee residing at the principal Observation Ports may designate also other ports where Merchant ships are bound to embark Observing Officers.

## CHAPTER 2

### *The Embarkation of International Observing Officers and Obligations Connected Therewith*

6. If the Administration of the International Non-Intervention Committee at the Observation Port cannot provide the ship with an Observing Officer within 4 hours from the time that the Administrator has been notified that the ship has entered the Port, the Master of the ship has the right to demand as early as possible a certificate which testifies that the ship has entered the Observation Port and fulfilled the obligation laid down in the Non-Intervention Agreement, and that the Administrator was unable to provide the ship with an Observing Officer.

7. A merchant ship is bound to fly a specially designed pennant on occasions when she is carrying an Observing Officer, or in case the ship has received the certificate mentioned in the previous paragraph. On other occasions it is prohibited to carry this special pennant.

8. The owners of merchant vessels or their representatives are under the obligation to provide accommodation for the Observing Officers on board the ship equivalent to that of ship's officers.

9. Shipowners are under the obligation to provide subsistence for Observing Officers similar to that provided for the masters of the ships concerned, for which payment will be made by the International Non-Intervention Committee at the rates fixed by the said Committee.

10. The Master of the ship is under the obligation to give all necessary facilities to Observing Officers to enable them to take the necessary steps to ascertain:

(1) whether any arms or war material are being unloaded in contravention of the Non-Intervention Agreement;

(2) whether, in contravention of the Agreement, any foreign nationals intending to take service in the present conflict are being disembarked;

(3) that on leaving any Spanish port no passenger or member of the crew, who may have left the ship while in port, has failed to return in contravention of the Non-Intervention Agreement.

11. The owner and the Master of the ship shall take all steps in their power to prevent the landing in Spanish ports, in contravention of the Non-Intervention Agreement, of any arms or war material or passengers.

12. After finally leaving Spanish waters, the Master of a ship is under the obligation to disembark the Observing Officers, according to the instructions of the Administrators of the Observation Port, either at the Observation Port nearest to the route that the Master intends to follow, or at any other port, which does not entail a deviation of more than 50 miles from such route.



## CHAPTER 3

*Rights of Observing Officers*

13. Observing Officers have the right:

(1) to demand at any time during the voyage all necessary information from the Master especially as to the cargo carried which is consigned to Spanish ports, and to inspect papers relating thereto;

(2) in the presence of the Master, or a member of the ship's staff nominated by him for that purpose, to interrogate passengers, and members of the ship's crew proceeding to Spanish ports, and to examine documents certifying their identity;

(3) to be present at the unloading of any goods or disembarkation of any persons in a Spanish port, and to require the Master to have opened for inspection any package which is being unloaded, and which the Observing Officer has reasonable grounds for suspecting to contain war material sent in contravention of the Non-Intervention Agreement, and to require the Master to have any necessary unpacking, repacking and sealing-up done.

14. Observing Officers, when engaged on duty at sea, will have the same priority for telephone and telegraph services as are granted to the service messages of the Master of the vessel on which they have been embarked.

15. The Chief Administrator of the Non-Intervention Committee, Administrators, and Deputy Administrators and their subordinates will be granted the same preferences and privileges as foreign representatives.

## CHAPTER 4

16. Merchant ships proceeding to Spanish ports are bound to stop within the 10-mile coastal zone along the coast of Spain and Spanish possessions on the order of the warship of the foreign country, which is carrying out in that Zone international sea control.

17. The warships mentioned in the foregoing paragraph have no right of search.

Persons designated for this purpose by the Commanding Officer of the Warship have the right to board merchant ships and to examine the ship's papers, and to ascertain whether the ship is carrying an Observation Officer or has the certificate foreseen in paragraph 6.

18. A merchant ship which has not complied with the procedure laid down in this Law is bound to carry out the instructions given by the Commanding Officer of the warship.

## CHAPTER 5

*Expenses in Connection with International Control*

19. Shipowners are liable for expenses incurred in respect of delay or diversion occasioned by the necessity to embark or disembark Observing Officers.

20. Merchant ships are exempt from harbour dues and other charges in

ports where they call merely for the purpose of embarking or disembarking Observing Officers.

In so far as such exemptions cannot be secured, the expenditure involved will be defrayed from the International Fund of the International Non-Intervention Committee.

#### CHAPTER 6

##### *Penalties Foreseen for Infringement of the Provisions of This Law*

21. Masters of Estonian ships, who have been found guilty of infringing the Agreement for Non-Intervention in Spain, non-submission to the control foreseen in this Law coming under this Provision, will be punished by a term of imprisonment not exceeding three years.

The offences specified in this paragraph come under the general section of the Criminal Law.

#### CHAPTER 7

22. The Minister of Communications is empowered to issue regulations for the bringing into force of this law.

## II

The present Law comes into force with its publication.

## 9

### FINLAND

#### I. LAW REGARDING CERTAIN MEASURES TO PREVENT PARTICIPATION IN THE CIVIL WAR IN SPAIN, APRIL 30, 1937

(See Appendix V—Finland)

#### II. DECREE CONCERNING PARTICIPATION IN THE CIVIL WAR IN SPAIN, APRIL 30, 1937<sup>1</sup>

(*Translation*)

Upon the basis of the report by the Minister for Foreign Affairs, it is provided, by virtue of paragraph 5 of the Law of April 30, 1937, referring to measures to prevent participation in the Spanish civil war:

#### § 1

Finnish vessels which call at Spain must call at certain foreign ports to embark duly appointed observing officers. After the vessel has left Spain, the observing officer must be disembarked at a certain port.

The Shipping Board will provide a list of the ports at which vessels shall stop for the reasons stated in Section 1 above.

<sup>1</sup> *Finlands Författningsamling*, 1937, No. 173.

## § 2

The observing officers referred to in Section 1 above shall be entitled, in accordance with instructions given to them, to examine cargo and passengers before unloading or landing in Spain.

Observing officers must be provided with accommodation aboard and receive messing at reasonable rates, also have the right to use the ship's wireless, telegraph and telephone apparatus.

When observing officers are aboard the vessel must fly a special pennant or other signal specified by the Shipping Board.

## § 3

Masters of Finnish ships referred to in Section 1 above shall permit naval vessels of France, Italy, Great Britain, or Germany to ascertain whether observing officers are on board or not.

## § 4

Spain shall be understood to include, for the purposes of this decree, the Spanish possessions and the Spanish Zone of Morocco.

For the present, and until further notice, the provisions of this Decree shall not apply to ships that call at the Canary Islands, and certain Spanish possessions on the west coast of Africa, concerning which the Shipping Board will give further information.

## § 5

Further provisions relating to this Decree shall be given by the Shipping Board.

## § 6

The provisions of this Decree and the regulations issued under Section 5 above shall have the force of law.

## § 7

This Decree and the regulations issued by the Shipping Board according to Section 5 above shall be in force until further notice, but not longer than up to April 1, 1938. A violation which has taken place during the time that the provisions of the Decree were in force will be punished even after the Decree has ceased to be in force.

## 10

## FRANCE

- I. LAW AUTHORIZING THE GOVERNMENT TO TAKE ALL MEASURES SERVING TO PREVENT THE DEPARTURE OF VOLUNTEERS FOR SPAIN, JANUARY 21, 1937

(See Appendix V—France)

II. DECREE FIXING THE MEASURES APPLICABLE TO FRENCH SHIPS IN EXECUTION OF THE LAW OF JANUARY 21, 1937, APRIL 8, 1937<sup>1</sup>

(*Translation*)

The President of the French Republic,

In consideration of the Law of January 21st, 1937, authorising the Government to take all measures serving to prevent the departure of volunteers for Spain;

In consideration of the Decrees of February 18th, 1937, taken in execution of the above mentioned Law;

Having heard the Council of Ministers;

DECREES:

ARTICLE 1. French ships, no matter from where they may be coming, which must call at a Spanish port (including the ports in the Spanish Zone of Morocco) are required to have on board at least one observer belonging to the Organization of Control of the Spanish frontiers. Whenever the Administrator in charge of the organization of that observation in one of the ports designated in Article 2 shall consider it necessary, two or three observing officers must be embarked.

Provisionally and until it shall be otherwise decided by an Order of the Ministers for Foreign Affairs and for Public Works, the preceding provision shall not apply to ships going to a port of the Canary Islands.

ART. 2. The observing officers shall be embarked at the ports designated herewith:

[ Here follows a schedule identical with that in Section 12 of the Resolution adopted by the Non-Intervention Committee.<sup>2</sup>]

ART. 3. Shipowners may make arrangements with the Administrator in charge of observation at the port where the ship must call, to embark the observing officer either at the port of sailing or at the port of call where he must normally carry out commercial operations.

In such cases, all expenses necessitated by this exception to the rule prescribed in Article 2 shall be defrayed by the shipowner.

ART. 4. After having left the last Spanish port at which he shall have landed passengers or unloaded goods, the ship must disembark the observing officer at one of the ports designated in Article 2, in such fashion as to deviate as little as possible from his normal route.

It may, upon agreement between the Master and the Administrator over the observing officer, be exempted from the provisions of the present Article. In this case, just as it is stated in Article 3 above, all expenses necessitated by this exception shall be defrayed by the shipowner.

ART. 5. During their stay on board, the observing officers shall have:

<sup>1</sup> *Journal Officiel*, April 9, 1937, pp. 4057-4058.

<sup>2</sup> See Appendix VI.

(a) The right to have opened for inspection, before the unloading of the cargo, any package whatever to see that it does not contain prohibited material;

(b) The right to have presented at any moment all documents relating to the cargo being transported and to obtain from the Master all information which he may possess about all cargo destined for Spain;

(c) The right to have presented the seamen's articles of agreement and all other documents in the possession of the Master;

(d) The right to interrogate passengers destined for Spanish ports and to examine their passports;

(e) A right of priority for wireless communications such as is accorded to diplomatic officers.

All the operations specified in paragraphs (a), (b), (c), (d) must take place in the presence of the Master or of one of his qualified representatives.

The Master shall prevent the disembarking at a Spanish port of persons which the observing officer shall indicate to him as going there in violation of the Non-Intervention Accord. He will do the same with respect to implementations of war which an observing officer has ascertained to be on board.

ART. 6. In no case and for no reason may the observing officer be classed as a passenger.

ART. 7. The observing officer or officers embarked on a ship bound for Spain shall receive accommodation and messing corresponding to that for the officers on board of ships which do not carry passengers, or for first class passengers on passenger ships.

ART. 8. The Master, officers and members of the crew shall give all possible facilities to enable the observing officers to discharge their duties.

ART. 9. Masters of ships bound for one of the ports designated in Article 2 shall have discretion to notify the Administrator of their arrival in advance by wireless, so that the duration of the call at the port may be limited to a minimum.

However, unless there is an agreement, no ship may take advantage of this notice to shorten the duration of the call to less than four hours, counting from the time of docking or of anchoring in the roads.

In the event that the Administrator should authorize the ship to depart without taking on an official observer, that ship shall be furnished with a certificate verifying the fact that it has conformed to the provisions of the present Decree.

ART. 10. The Master of a ship having on board one or several observing officers or furnished with the certificate specified in Article 9 is bound, when he draws near the Spanish coast, to display the signals indicated to him by the Administrator or the official observer.

A Master of a ship not complying with the conditions specified in the preceding paragraph is forbidden to display the said signals.

ART. 11. The Master of any ship having touched at a port to take on an

observing officer must notify the Administrator for Naval Conscription of the port, if it is a French port, or the Administrator for Naval Conscription of the first French port at which he calls. He shall do the same concerning the disembarkation of the observing officer and shall file a report mentioning the various operations to which he shall have been subjected.

ART. 12. By virtue of the provisions of the Law of May 28th, 1928, instituting a docking fee, and the provisions of Decrees instituting tolls in the ports of Cherbourg, Brest, Bordeaux-Le Verdon, Marseilles, Sete and Oran, ships entering one or the other of the designated ports, whether to embark or to disembark the observing officer, in accordance with the provisions of Article 1 above, shall be exempted from payment of the docking fees and the tolls, on condition that they do not engage in commercial or revictualling activity in those ports.

ART. 13. Charges due, upon entrance to or departure from the ports specified in Article 2, for pilotage operations, shall be determined in accordance with regulations in force.

ART. 14. French ships coming from any port whatever and proceeding toward a Spanish port (including ports of the Spanish Zone of Morocco) shall be subjected:

1. To provisions which may be set up concerning the focal areas through which ships shall pass in the different sectors of observation of the Spanish coasts.

2. To verification of their identity by naval vessels of the Powers party to the Non-Intervention Accord charged with the observation of the Spanish coasts in their respective sectors.

3. To verification by the said naval vessels of the ship's calling at one of the ports specified in Article 2 and taking on board one or several observing officers.

4. To directions which the said naval vessels may give them in the discharge of their mission of observation.

ART. 15. In the event that, as a consequence of bad weather, or other circumstance of *force majeure*, a ship was forced to enter Spanish territorial waters without observing the prescriptions of the preceding articles, it shall be bound to give account of its destination to the commanders of the naval vessels charged with observation who hailed it.

ART. 16. French companies engaged in regular trade with Spanish ports may arrange with the Board concerning the embarking of observing officers on board their ships. In the event that the regime thus established should entail extra expenses, they shall be defrayed by the companies.

ART. 17. Infractions of the provisions of the present Decree shall be punished as provided for by the Law of January 21st, 1937.

ART. 18. The Under-Secretary of State for the Merchant Marine shall fix by Order, all complementary provisions concerning the accommodation and messing of the observing officers, as well as concerning the amount of reim-

bursement to be provided with respect to the carrying out of observation aboard French ships.

ART. 19. The present Decree shall be applicable at a subsequent date, to be fixed by a notice published in the *Official Journal* through the good offices of the Minister for Foreign Affairs.

The date upon which these provisions shall cease to be in force shall be fixed by Decree.

ART. 20. The President of the Council, the Ministers for Foreign Affairs, for Finance, for the Navy and for Public Works are charged, each in so far as it concerns him, with the execution of the present Decree, which shall be inserted in the *Official Journal*.

### III. NOTICE IN THE *Official Journal* OF APRIL 17, 1937, FIXING THE DATE FOR ENTRANCE INTO FORCE OF THE PROVISIONS OF THE DECREE OF APRIL 8, 1937 <sup>3</sup>

(Translation)

In accordance with the provisions of Article 19 of the Decree of April 8, 1937 (*Journal Officiel*, April 9, 1937), the date for entrance into force of the provisions of the said Decree is fixed for April 20, 1937, at zero hour.

### IV. DECREE OF JUNE 15, 1937, AMENDING THE PROVISIONS OF THE DECREE OF APRIL 8, 1937 <sup>4</sup>

(Translation)

The President of the French Republic,

In consideration of the Law of January 21, 1937, authorizing the Government to take all measures serving to prevent the departure of volunteers for Spain;

In consideration of the Decrees of February 18, 1937, taken in execution of the Law above-mentioned;

In consideration of the Decree of April 8, 1937, fixing the measures to be applied to French ships, in execution of the Law of February 21, 1937;

Having heard the Council of Ministers,

#### DECREES:

ARTICLE 1. The following amendments are made to the Decree of April 8, 1937:

1. Paragraph (b) of Article 2 (2) is revised as follows:

"A ship not covered by the paragraph above and proceeding to a Spanish port, from a port on the Channel south of Dover, shall call at Brest;"

2. Paragraph (c) of Article 2 (2) is revised as follows:

<sup>3</sup> *Journal Officiel*, April 17, 1937, p. 4340.

<sup>4</sup> *Ibid.*, June 16, 1937, p. 6715.

"A ship proceeding from a port of the Irish Free State, or from Northern Ireland, or from the Irish and Bristol Channels to a Spanish port, shall call at Brest;"

3. In Article 12, the word "Cherbourg" is suppressed.

ART. 2. The provisions of the present Decree shall be applicable from June 18 at zero hour.

ART. 3. The President of the Council, the Ministers for Foreign Affairs, for Finance, for the Navy and for Public Works are charged, each in so far as he is concerned, with the execution of the present Decree which shall be inserted in the *Official Journal*.

V. DECREE OF OCTOBER 26, 1937, AMENDING CERTAIN PROVISIONS OF THE DECREE OF JUNE 15, 1937<sup>5</sup>

(Translation)

The President of the French Republic,

In consideration of the Law of January 21, 1937, authorizing the Government to take all measures serving to prevent the departure of volunteers for Spain;

In consideration of the Decrees of February 18, 1937, taken in execution of the above-mentioned Law;

In consideration of the Decree of April 8, 1937, fixing the measures to be applied to French ships in execution of the Law of January 21, 1937, and the Decree of June 15, 1937, amending it;

Having heard the Council of Ministers,

DECREES:

ARTICLE 1. Article 2 of the Decree of April 8, 1937, as amended by Article 1 of the Decree of June 15, 1937, is abrogated and replaced by the following text:

ART. 2. For the embarkation of observing officers, merchant ships proceeding to a Spanish port (other than ports of the Canary Islands) shall conform to the following regulations:

[Here follows a schedule identical with that annexed to the British Regulation of September 23, 1937, for which see above.]

ART. 2. The regulations for embarkation fixed above shall go into force October 1, 1937, with the exception of those concerning the replacement of Brest by Falmouth as an observation port, which shall go into force October 15, 1937.

During the period from October 1 to 14, each instance in which Falmouth is mentioned in the new regulations it shall be considered as applying to Brest.

ART. 3. The President of the Council, the Ministers for Foreign Affairs,

<sup>5</sup> *Journal Officiel*, Oct. 28, 1937, pp. 12012-12013.



for Finance, for the Navy and for Public Works are charged, each in so far as he is concerned, with the execution of the present Decree, which shall be inserted in the *Official Journal*.

## II

## GERMANY

## I. LAW FOR THE PREVENTION OF PARTICIPATION IN THE SPANISH CIVIL WAR, FEBRUARY 18, 1937

(See Appendix V—Germany)

II. LAW FOR THE SUPERVISION OF THE TRAFFIC OF THE GERMAN MERCHANT MARINE WITH SPANISH PORTS, APRIL 7, 1937<sup>1</sup>

(*Translation*)

The German Government has decided upon the following law which is herewith proclaimed:

## § 1

The transportation of volunteers who wish to go to Spain or to the Spanish possessions, including the Spanish Zone of Morocco, in order to take part in the civil war, as well as the transportation of war material destined for the above-named territories is forbidden to ships of the German merchant marine.

## § 2

1. The Minister of Communications is authorized to make necessary arrangements for the supervision of the traffic of the German merchant marine with Spanish ports.

2. Particularly, the Minister of Communications may decree regulations for the embarkation, keep, and debarkation of official observers, as well as for the support of all measures undertaken by these observers and by the naval vessels of the sea-Powers concerned which are entrusted with the supervision of the merchant marine.

## § 3

Anyone acting in contravention of Section One of this Law or any Regulation decreed on the basis of Section Two of this Law shall be punished by imprisonment or fine up to 100,000 rm.

## § 4

1. The Minister of Foreign Affairs may designate which persons are to be regarded as volunteers and which objects are to be regarded as war material in the sense of Section 1.

2. He shall designate the time that this Law shall cease to be in force.

<sup>1</sup> *Reichsgesetzblatt*, II S.127. Supplied by the German Government.

III. REGULATIONS FOR THE EXECUTION OF THE LAW CONCERNING THE  
SUPERVISION OF THE TRAFFIC OF THE GERMAN MERCHANT MARINE  
WITH SPANISH PORTS, APRIL 7, 1937<sup>2</sup>

(Translation)

By virtue of § 2 of the law concerning the supervision of traffic of the German merchant marine with Spanish ports of April 7, 1937, it is hereby decreed:

§ 1

*Duties of Shipowners and Masters*

Shipowners and Masters of ships of the German merchant marine which touch ports of the Spanish motherland, the Balearic Islands, and the Spanish Zone of Morocco must discharge the following duties:

(a) Before the German merchant ships call at a Spanish port they must embark Officials of the International Observation Office in those ports designated in paragraph 3 (Observation Ports) unless they have a permanent Official Observer on board by agreement with the International Observation Office.

(b) The Official Observers are to be kept on passenger ships as first class passengers. On ships that do not carry first class, the Observers are to be accommodated and kept as well as possible, in any case like officers. Shipowners are liable to them for damages in the same way as toward passengers.

(c) Masters must at all times facilitate examination by the Observers of the cargo intended for Spain. Particularly they must submit to them, if they so request, the papers concerning the cargo; they must allow them entrance into the hold and open hatchways and packages.

(d) Masters must at any time give the Observers all necessary information about the passengers and concerning the crew, by presenting the ship's papers and other documents, and they must be present, or be represented by an officer at their questioning.

(e) Masters must provide that messages of the Observing Officers are sent in the same way as those of the command of the ship.

(f) Ships which have an Observing Officer on board must, within ten miles from the Spanish coast, fly the pennant designated by the International Observation Office.

(g) Should there be war material or war volunteers on board, the Masters must, if possible, prevent their getting into Spanish ports.

(h) Masters must, after leaving Spanish waters, touch the Observation Port which the Administrator in charge has designated as the Observation Port for disembarking the Observer. They are only bound by these measures if they do not necessitate a greater deviation than 50 miles off the course of the ship. Otherwise they shall land the Observing Officer at the nearest Observation Port after leaving Spanish territorial waters. The Administra-

<sup>2</sup> Supplied by the German Government.

tors may allow the Observers to be embarked and disembarked outside of the Observation Port.

(i) German merchant ships must obey within 10 miles of the Spanish coast, the orders of the Commanders who are entrusted with the supervision of the traffic of the merchant marine with Spanish ports in so far as they wish to verify the existence of regular ship's papers and the presence of Observers. Merchant ships must go to certain points which are designated by the States entrusted with the supervision.

### § 2

#### *Duties of Passengers and Crew*

1. Passengers on German merchant ships must answer questions of the Observers regarding the object of their trip. In doing that they must show their passports and other papers of legitimation.

2. The same is binding upon the crew of the ship. The crew must assist the Observers in every way in the discharge of their duties.

### § 3

#### *Observation Ports*

[The schedule of Observation Ports here given corresponds to that in the Resolution of the Non-Intervention Committee. See Appendix VI.]

### § 4

#### *Demurrage*

1. German merchant ships are obliged to wait up to four hours in the Observation Port for the embarkation of Observing Officers. This time begins from the reporting by the Master or agent of the shipowner to the Administrator that the ship has arrived in the port.

2. If no Observing Officers can be given to a ship within the demurrage the Master must be given a certificate to that effect. By virtue of this certificate he has the right to land at Spanish ports without observing officers.

*The Transportation Minister,*  
DORPMÜLLER.

#### IV. A SECOND DECREE FOR THE EXECUTION OF THE LAW FOR THE SUPERVISION OF THE TRAFFIC OF THE GERMAN MERCHANT MARINE WITH SPANISH PORTS, OCTOBER 15, 1937<sup>3</sup>

<sup>3</sup> Supplied by the German Government.

#### *(Translation)*

The Governments which are represented in the International Committee for the execution of the agreement concerning the Non-Intervention in Spain have decided to designate Falmouth instead of Brest as an Observation Port and also to bring about certain facilitations in the calling at Observation Ports.

In execution of the agreement the following is decided by virtue of Section 2 of the Law for the Supervision of the Traffic of the German Merchant Marine with Spanish Ports of April 7, 1937:

Section 3 of the Regulation for the execution of the Law for the Supervision of the Traffic of the German Merchant Marine with Spanish Ports of April 7, 1937, is worded as follows:

### § 3

#### *Supervision*

Germant merchant ships must embark Observing Officers in the following ports:

- (a) in Gibraltar,
  - if they go through the Straits of Gibraltar in either easterly or westerly direction before calling at a Spanish port,
  - or
  - if they are coming from a port on the Atlantic coast of Morocco and are not bound for a Spanish port north of Portugal;
- (b) in Dover,
  - when they are proceeding from the north through the Channel and call at a Spanish port on the Atlantic Ocean,
  - also
  - if they come from a Portuguese port;
- (k) Ships which are proceeding from a point west of Longitude  $15^{\circ}$  West of Greenwich, or from a point in the Atlantic south of Latitude  $28^{\circ}$  North, may choose among the ports of Madeira, Gibraltar, and Lisbon.

*The Transportation Minister,*  
(Acting) KOENIGS.

### 12

#### GREECE

- I. LAW REGARDING PROHIBITION OF CONSCRIPTION OR OF DEPARTURE OF VOLUNTEERS TO SPAIN, MARCH 2, 1937  
(See Appendix V—Greece)

- II. RÉSUMÉ OF A COMMUNICATION OF THE MINISTRY OF FOREIGN AFFAIRS, FIRST DIVISION OF POLITICAL AFFAIRS, TO THE MINISTRY OF COMMERCIAL NAVIGATION, MARCH 16, 1937 (No. 5343)<sup>1</sup>

By this letter the Ministry of Foreign Affairs requested the Department of Commercial Navigation to issue the necessary instructions to ship owners

<sup>1</sup> Furnished by the Greek Government.

and masters of Greek vessels on the basis of the decisions taken by the London International Committee for Non-Intervention in Spain.

After setting forth the decisions of the London International Committee for Non-Intervention in Spain in detail, the letter ends by stating to the Ministry of Commercial Navigation that it will be informed in due time of the decisions of the Committee on the dispensation of payment of fees of vessels calling under the conditions named above at ports where a control service functions for the only purpose of taking a controller aboard, and requests that the proper steps be urgently taken so that vessels flying Greek flags observe the aforesaid decisions of the International Committee, suggesting at the same time to the Department of Commercial Navigation that, in case of need, they issue orders to impose fines and other measures against violators.

III. RÉSUMÉ OF A COMMUNICATION OF THE MINISTRY OF FOREIGN AFFAIRS, FIRST DIVISION OF POLITICAL AFFAIRS, TO THE MINISTRY OF COMMERCIAL NAVIGATION, MARCH 18, 1937 (No. 5343b)<sup>2</sup>

Complementing letter 5343 of March 16, 1937, the Ministry of Foreign Affairs announces to the Ministry of Commercial Navigation that the London Committee for Non-Interference in Spain in order to insure accurate observations of its decisions regarding the control of importations in Spain by means of officers, controllers, has decided to institute a maritime control on the coast of Spain assumed by the war vessels of Great Britain, France, Germany and Italy.

Further, the letter sets forth the decisions of the Committee on the above matter. It ends by requesting from the Department of Commercial Navigation that on the basis of the aforesaid decisions, the necessary instructions and orders be issued to the ship owners and masters of Greek vessels, and officials so that the interested parties be advised accordingly in due time for the purpose of fulfilling the international obligations of Greece.

A request is added that the Department of Commercial Navigation advise, as soon as possible, the Ministry of Foreign Affairs of the steps and action taken on the contents of this letter as well as on the contents of letter No. 5343, so that the Ministry of Foreign Affairs may communicate such action to the International Committee for Non-Interference in Spain.

IV. RÉSUMÉ OF A CIRCULAR REGARDING THE CONTROL OF SPANISH FRONTIERS AND COASTS, ISSUED BY THE MINISTRY OF COMMERCIAL NAVIGATION OF GREECE, FIRST DIVISION ADMINISTRATIVE SERVICE, TO THE PORT AUTHORITIES AND SEA PORT CONSULAR AUTHORITIES, MARCH 20, 1937 (No. 8490/1517)<sup>3</sup>

By this Letter the Department of Commercial Navigation sends to the Port Authorities and the Sea Port Consular Authorities two letters attached

<sup>2</sup> Furnished by the Greek Government.      <sup>3</sup> Furnished by the Greek Government.

hereto, sub No. 5343 of March 16, 1937 and 5343 bis of March 18, 1937, received from the Ministry of Foreign Affairs with instructions that this letter as well as the other two letters from the Ministry of Foreign Affairs be communicated to the Masters of Greek vessels sailing from their ports and also to the ship owners residing in such ports whose vessels ply abroad.

It is added that Masters violating the obligations assumed by the International Agreement will be indicted according to Articles 41 and 42 of the penal and nautical codes involving imprisonment up to 6 months and a fine up to 500 drachmas, and also indicted before an investigating committee according to Article 8, paragraph I.g- of the Penal Code involving disciplinary punishment, up to 2 years by privation of the captain's diploma.

## 13

## HUNGARY

- I. DECREE OF THE ROYAL HUNGARIAN CABINET OF MINISTERS CONCERNING NON-INTERVENTION IN SPAIN, FEBRUARY 20, 1937

(See Appendix V—Hungary)

- II. DECREE OF THE ROYAL HUNGARIAN MINISTER OF COMMERCE AND TRANSPORTATION CONCERNING TRAVEL RESTRICTIONS TO SPAIN

(See Appendix V—Hungary)

## 14

## IRISH FREE STATE

- I. THE MERCHANT SHIPPING (SPANISH CIVIL WAR) ACT, MARCH 11, 1937<sup>1</sup>

## ACT

## ENTITLED

AN ACT TO MAKE PROVISION FOR CARRYING INTO EXECUTION THE INTERNATIONAL OBLIGATIONS OF SAORSTAT EIREANN IN RELATION TO THE CIVIL WAR NOW BEING WAGED IN SPAIN SO FAR AS SUCH OBLIGATIONS RELATE TO MERCHANT SHIPPING.

*Be it Enacted by the Oireachtas of Saorstat Eireann as follows:*

1. This Act may be cited as the Merchant Shipping (Spanish Civil War) Act, 1937.

2. (1) This Act shall come into operation on such day as the Executive Council shall by order appoint for that purpose, and shall (unless con-

<sup>1</sup> English text supplied by the British Foreign Office through the courtesy of the Department of State, Washington.

tinued under next following sub-section of this section) expire at the expiration of six months from that day.

(2) So long as this Act is in force, the Executive Council may, whenever and so often as they think proper, by order continue this Act in force for such time (not exceeding six months from the date on which it would otherwise expire) as they shall think proper and shall specify in such order and, whenever any such order is made by the Executive Council, this Act shall continue in force in accordance with such order and shall (unless further continued under this sub-section) then expire.

(3) If the Executive Council do not, within one year after the passing of this Act, appoint the day on which this Act is to come into operation, this Act shall expire at the expiration of one year from the passing of this Act.

3. In this Act—

the expression “the Minister” means the Minister for Industry and Commerce;

the expression “the International Committee” means the Committee known as the International Committee for the Application of the Agreement regarding Non-Intervention in Spain and consisting of representatives of the respective Governments of Saorstat Eireann and several other countries;

the expression “the Board” means any board set up by the International Committee for the purpose of carrying out the observation of the Spanish frontiers;

the word “Spain” includes all Spanish possessions and territories and the Spanish Zone of Morocco;

the expression “Saorstat Eireann merchant ship” means a ship registered under the Merchant Shipping Acts, 1894 to 1933, whose port of registry is situate in Saorstat Eireann.

4. (1) In order to fulfill the international obligations of the Government of Saorstat Eireann as one of the Governments represented on the International Committee, the Minister may from time to time by order take all such steps and do all such things as shall appear to him to be necessary or proper to be done by the Government of Saorstat Eireann in respect of merchant shipping for the purpose of giving practical effect to the resolutions in relation to the observation of the frontiers of Spain from time to time passed by the International Committee, and for that purpose and without prejudice to the generality of the foregoing provision the Minister may by order do all or any of the following things, that is to say:

(a) regulate, restrict, and control the movements of Saorstat Eireann merchant ships in waters adjacent to Spain or proceeding to or coming from a port in Spain;

(b) require such ships to embark, carry, and disembark officers of the Board and to give such officers all requisite facilities;

(c) require such ships to display specified flags in specified circumstances;

(d) confer on officers of ships of war of specified countries powers of

stopping and boarding Saorstát Eireann merchant ships, examining the papers of such ships, and interrogating the officers, crew, and passengers (if any) of such ships;

(e) provide for any matter or thing ancillary or incidental to any provision inserted in such order under any of the foregoing paragraphs of this sub-section.

(2) An order made under this section may declare an infringement of the provisions or any particular provision thereof to be an offence punishable by law.

(3) The Minister may by order revoke or amend any order previously made by him under this section, including an order made under this sub-section.

(4) Any person guilty of any act (whether of commission or omission) which is declared by an order made under this section to be an offence punishable by law shall be liable—

(a) on conviction thereof on indictment to a fine not exceeding five hundred pounds, or at the discretion of the Court, to imprisonment for a term not exceeding two years or to both such fine and such imprisonment, or

(b) on summary conviction thereof to a fine not exceeding fifty pounds or, at the discretion of the Court, to imprisonment for a term not exceeding six months, or to both such fine and such imprisonment.

(5) A person may be arrested and tried and, if convicted, may be punished under this section after the expiration of this Act or after the expiration of an order made under this section for an offence under such order committed or alleged to have been committed by him while such order was in force.

## II. THE MERCHANT SHIPPING (SPANISH CIVIL WAR) ACT, 1937 (COMMENCEMENT) ORDER, MARCH 19, 1937<sup>2</sup>

WHEREAS it is enacted by sub-section (1) of Section 2 of the Merchant Shipping (Spanish Civil War) Act, 1937 (No. 9 of 1937), that that Act shall come into operation on such day as the Executive Council shall by order appoint for that purpose:

Now, the Executive Council in exercise of the power conferred on them by Section 2 of the Merchant Shipping (Spanish Civil War) Act, 1937 (No. 9 of 1937), and of every and any other power them in this behalf enabling do hereby order as follows:

1. This Order may be cited as the Merchant Shipping (Spanish Civil War) Act, 1937 (Commencement) Order, 1937.

2. The Interpretation Act, 1923 (No. 46 of 1923), applies to the interpretation of this Order in like manner as it applies to the interpretation of an Act of the Oireachtas.

<sup>2</sup> *Statutory Rules and Orders*, No. 51, 1937. English text supplied by the British Foreign Office through the courtesy of the Department of State, Washington.



3. The Merchant Shipping (Spanish Civil War) Act, 1937 (No. 9 of 1937) shall come into operation on the twentieth day of March, 1937.

### III. THE MERCHANT SHIPPING (SPANISH CIVIL WAR) ORDER, APRIL 17, 1937<sup>3</sup>

WHEREAS by virtue of the Merchant Shipping (Spanish Civil War) Act, 1937 (Commencement) Order, 1937 (Statutory Rules and Orders No. 51 of 1937), the Merchant Shipping (Spanish Civil War) Act, 1937 (No. 9 of 1937), came into operation on the 20th day of March, 1937:

AND WHEREAS it is enacted by sub-section (1) of section 4 of the said Act that in order to fulfil the international obligations of the Government of Saorstat Eireann as one of the Governments represented on the International Committee for the Application of the Agreement regarding Non-Intervention in Spain and consisting of representatives of the respective Governments of Saorstat Eireann and several other countries, the Minister for Industry and Commerce may from time to time by order take all such steps and do all such things as shall appear to him to be necessary or proper to be done by the Government of Saorstat Eireann in respect of merchant shipping for the purpose of giving practical effect to the resolutions in relation to the observation of the frontiers of Spain from time to time passed by the said International Committee, and for that purpose and without prejudice to the generality of the foregoing provision the said Minister may by order do all or any of the following things, that is to say:

(a) regulate, restrict, and control the movements of ships registered under the Merchant Shipping Acts, 1894 to 1933, whose ports of registry are situate in Saorstat Eireann in waters adjacent to Spain or proceeding to or coming from a port in Spain;

(b) require such ships to embark, carry, and disembark officers of any board set up by the said International Committee for the purpose of carrying out the observations of the Spanish frontiers and to give such officers all requisite facilities;

(c) require such ships to display specified flags in specified circumstances;

(d) confer on officers of ships of war of specified countries powers of stopping and boarding ships registered under the Merchant Shipping Acts, 1894 to 1933, whose ports of registry are situate in Saorstat Eireann, examining the papers of such ships, and interrogating the officers, crew, and passengers (if any) of such ships;

(e) provide for any matter or thing ancillary or incidental to any provision inserted in such order under any of the foregoing paragraphs:

AND WHEREAS by sub-section (2) of the said section 4 it is enacted that an order made under the said section may declare an infringement of the

<sup>3</sup> *Statutory Rules and Orders*, No. 76, 1937. English text supplied by the British Foreign Office through the courtesy of the Department of State, Washington.

provisions or any particular provision thereof to be an offence punishable by law:

Now, therefore, the Minister for Industry and Commerce, in exercise of the powers conferred on him by section 4 of the Merchant Shipping (Spanish Civil War) Act, 1937 (No. 9 of 1937), and of every and any other power him in this behalf enabling, hereby orders as follows, that is to say:

1. This Order may be cited as the Merchant Shipping (Spanish Civil War) Order, 1937.

2. The Interpretation Act, 1923 (No. 46 of 1923), applies to the interpretation of this Order in like manner as it applies to the interpretation of an Act of the Oireachtas.

3. This Order shall come into operation on Tuesday, the 20th day of April, 1937.

4. In this Order—

the expression “the International Committee” means the Committee known as the International Committee for the Application of the Agreement regarding Non-Intervention in Spain and consisting of representatives of the respective Governments of Saorstat Eireann and several other countries;

the expression “the Board” means the International Board for Non-Intervention in Spain established by the International Committee to administer a scheme of observation of Spanish frontiers;

the expressions “chief administrator,” “administrator,” “deputy administrator” and “observing officer” mean officers of the Board known by those titles, respectively;

the word “Spain” includes all Spanish possessions and territories (other than the Canary Islands) and the Spanish Zone of Morocco;

the expression “Spanish waters” means the waters within ten sea miles of the coast of Spain;

the expression “Saorstat Eireann merchant ship” means a ship registered under the Merchant Shipping Acts, 1894 to 1933, whose port of registry is situate in Saorstat Eireann;

the expression “the Spanish civil war” means the civil war which is being waged in Spain at the commencement of this Order.

5. (1) Before entering Spanish waters, the master of every Saorstat Eireann merchant ship proceeding to Spain shall, subject to the provisions of this Order, embark at the appropriate port either—

(a) two or more observing officers, or

(b) at the discretion of the administrator or deputy administrator in charge of the appropriate port in the case of a small ship, a ship carrying cargo in bulk or a ship in ballast, one observing officer.

(2) Where a Saorstat Eireann merchant ship proceeding to Spain calls at the appropriate port for the purpose of embarking observing officers and upon so calling it is ascertained that no such officers are available, the master of such ship may obtain from the administrator or deputy administrator in charge of such a port a certificate (in this Order referred to as an exemption

certificate) certifying that no observing officers were available at such port and upon such certificate being issued to such master such ship may proceed to Spain without having embarked any observing officer.

(3) In this Article the expression "the appropriate port" used in relation to a Saorstat Eireann merchant ship proceeding to Spain—

(a) in case such ship is passing in either direction through the Straits of Gibraltar, means Gibraltar, and

(b) in case such ship is not passing in either direction through the Straits of Gibraltar means—

(i) if such ship is passing through the English Channel from a port lying to the north and east of Dover—Dover or The Downs.

(ii) if such ship is proceeding from a port in the English Channel south of Dover except where such port is Brest or lies between Cherbourg and Brest—Cherbourg,

(iii) if such ship is proceeding from Saorstat Eireann, Northern Ireland, the Irish Sea, Bristol Channel, Brest, or a port between Cherbourg and Brest—Brest,

(iv) if such ship is proceeding from a French Atlantic or Biscayan port south of Brest—Le Verdon,

(v) if such ship is proceeding westward through the Mediterranean Sea or from a port therein east of longitude  $12^{\circ}$  east and provided that none of the next three paragraphs of this sub-article apply to such ship—Palermo or Marseilles,

(vi) if such ship is proceeding from a North African port west of longitude  $12^{\circ}$  east—Oran,

(vii) if such ship is proceeding from Marseilles or a port on the French or Italian coast between Marseilles and longitude  $12^{\circ}$  east or from Corsica or Sardinia—Marseilles,

(viii) if such ship is proceeding from a French Mediterranean port west of Marseilles—Cette,

(ix) if such ship is proceeding from the west of longitude  $15^{\circ}$  west or is proceeding in the Atlantic from the southward of latitude  $28^{\circ}$  north—Madeira, Gibraltar or Lisbon,

(x) if such ship is proceeding from a port on the Atlantic seaboard of Morocco—Gibraltar or Lisbon, and

(xi) if such ship is proceeding from a Portuguese port—Lisbon, and

(c) in any special case as specified by the administrator in charge of any of the following ports, that is to say, The Downs, Dover, Cherbourg, Lisbon, Gibraltar, Marseilles, Palermo, Madeira, or in any case of a special class as so specified, means such port as the administrator in question shall, having regard as far as possible to commercial convenience, direct.

6. Where any Saorstat Eireann merchant ship is engaged in regular trade with Spain, the owner of such ship may arrange with the Board for observing officers to be stationed continuously on such ship in lieu of embarking such officers during each voyage to Spain, but any additional expenditure involved by such arrangement shall be defrayed by such owner.

7. The master of any Saorstat Eireann merchant ship on which observing officers have been embarked under this Order shall disembark such officers after such ship has finally quitted Spanish waters at such port as shall be directed by the administrator or deputy administrator in charge of the port of such officers' embarkation, provided that such disembarkation does not entail a diversion from such ship's intended route after finally quitting Spanish waters involving more than fifty sea miles additional steaming.

8. (1) The master of every Saorstat Eireann merchant ship on which observing officers have been embarked under this Order shall afford such officers all requisite facilities for enabling them to satisfy themselves—

(a) whether any implements of war or war material mentioned in the Schedule of this Order are unloaded in Spain from such ship,

(b) whether any persons (not being Spanish citizens) who intend to take service in the Spanish civil war are disembarked in Spain from such ship, and

(c) whether, on leaving any Spanish port, any passenger or member of the crew of such ship who landed at such port has not returned.

(2) The facilities to be afforded under this article by the master of a Saorstat Eireann merchant ship to observing officers embarked thereon shall include—

(a) the right at any convenient time during the voyage to obtain all necessary information from such master as to any cargo carried on such ship consigned to a Spanish port and to inspect the papers relating to such cargo,

(b) the right at any convenient time during the voyage to obtain all necessary information from such master and, in his presence or in that of an officer nominated by him in that behalf, to interrogate any passengers, officers and crew proceeding to Spain and to examine the passports of such passengers and the identity papers of such officers and crew,

(c) the right to be present at the unloading of any goods or disembarkation of any persons in a Spanish port, to require such master to have opened for inspection any package which is being unloaded in a Spanish port and which such observing officers have reasonable grounds for suspecting contains any of the implements of war or war material mentioned in the Schedule to this Order, and to require such master to cause any necessary unpacking, repacking and sealing to be done in connection with such inspection.

9. Observing officers when engaged on duty on a Saorstat Eireann merchant ship shall be granted the same priority for telephone and telegraph services as are granted to the service messages of the master of such ship.

10. (1) The Owner of every Saorstat Eireann merchant ship proceeding to Spain shall provide proper accommodation for any observing officers embarked under this Order on such ship.

(2) In this Article the expression "proper accommodation" means accommodation equivalent to either—

(a) the accommodation provided on the relevant ship for officers of the rank of mate, or

(b) in the case of a ship having accommodation for more than twelve passengers, the accommodation provided for first-class passengers, or where there is no accommodation classed as first class, the highest class of accommodation provided for passengers.

11. The owner of every Saorstat Eireann merchant ship proceeding to Spain shall provide subsistence for any observing officers embarked under this Order on such ship and such subsistence shall, where first class passengers are carried on such ship, be similar to that provided for such passengers or, in any other case, similar to that provided for the master of such ship.

12. Observing officers carried on Saorstat Eireann merchant ships under this Order shall be so carried on the same conditions with regard to liability for life and property as if they were passengers on such ship.

13. The owner and master of every Saorstat Eireann merchant ship proceeding to Spain shall each take all such steps as are within their respective powers to prevent the landing in a Spanish port from such ship of any implements of war or war materials mentioned in the Schedule to this Order or of any persons (not being Spanish citizens) who intend to take service in the Spanish civil war.

14. The master of every Saorstat Eireann merchant ship proceeding to Spain and either on which observing officers have been embarked under this Order, or in respect of which an exemption certificate has been issued, shall fly the special pennant for the time being specified by the Board to be then flown and the said pennant shall not be flown by the master of any Saorstat Eireann merchant ship except as aforesaid.

15. No claim for compensation in respect of delay or diversion of any Saorstat Eireann merchant ship occasioned by embarking or disembarking observing officers at any port shall be made against the Board unless, in the case of a call at one of the ports mentioned in Article 5 of this Order for the purpose of embarking an observing officer or officers, either—

(a) the administrator or deputy administrator in charge of such port fails to embark such officer or officers at the earliest possible moment and not, in any case, later than four hours after such ship's arrival at such port has been reported to such administrator or deputy administrator, or

(b) where such administrator or deputy administrator is unable to embark such officer or officers within four hours after such ship's arrival at such port has been reported to him, such administrator or deputy administrator fails to issue to the master of such ship an exemption certificate.

16. (1) The officer in command of any vessel of the naval forces of the

United Kingdom of Great Britain and Northern Ireland, France, Germany or Italy shall have the right, at any place within Spanish waters and within the zone of naval observation of Spain for the time being assigned by the International Committee to the particular country to which such vessel belongs, to do all or any of the following things in respect of any Saorstat Eireann merchant ship which such officer suspects is proceeding to Spain, that is to say—

(a) to verify the identity of such ship and for that purpose to order such ship to stop, to board it, to examine its certificates of registry and clearance documents, and to ascertain whether there are observing officers on board,

(b) to ascertain whether such ship has called at one of the ports mentioned in Article 5 of this Order and has there embarked one or more observing officers, or whether an exemption certificate has been issued in respect of such ship,

(c) to require the master of such ship, if it is ascertained that such ship is proceeding to Spain, to approach his destination in Spain by a particular route or through a particular area.

(2) The master of every Saorstat Eireann merchant ship proceeding to Spain shall afford the necessary facilities to officers in command of vessels of the naval forces of the United Kingdom of Great Britain and Northern Ireland, France, Germany and Italy to enable such officers to exercise the rights conferred on them by this Article.

17. Any act which is an infringement of any provision contained in any Article of this Order shall be an offence punishable by law.

18. Where the evidence of any person who is an administrator, deputy administrator, observing officer or officer commanding a vessel of the naval forces of Great Britain and Northern Ireland, France, Germany or Italy is required for the purposes of any prosecution in respect of the infringement of any provision in any Article of this Order, such evidence may be taken on commission in the country where such person for the time being resides and as so taken shall be admissible for the purposes of such prosecution in any court in Saorstat Eireann.

#### SCHEDULE

##### *Implements of War and War Material*

##### Category I:

1. Rifles and carbines and their barrels.
2. Machine guns, automatic rifles and machine pistols of all calibres and their barrels.
3. Guns, howitzers and mortars of all calibres, their mountings, barrels and recoil mechanisms.
4. Ammunition for the arms enumerated under 1 and 2 above; filled and unfilled projectiles for the arms enumerated under 3 above, and prepared propellant charges for these arms.

5. Grenades, bombs, torpedoes and mines, filled or unfilled, and apparatus for their use or discharge.
6. Tanks, armoured vehicles and armoured trains. Armour plate of all kinds.

## Category II:

Vessels of war of all kinds, including aircraft carriers and submarines.

## Category III:

1. Aircraft, assembled or dismantled, both heavier and lighter than air, and their propellers or air-screws, fuselages, aerial gun-mounts and frames, hulls, tail units and under-carriage units.
2. Aircraft-engines.

## Category IV:

Revolvers and automatic pistols of a weight in excess of 1 lb. 6 ozs. (630 grammes) and ammunition therefor.

## Category V:

1. Flame-throwers and all other projectors used for chemical or incendiary warfare.
2. Mustard gas, Lewisite, ethyldichlorarsine, methyldichlorarsine, and all other products destined for chemical or incendiary warfare.
3. Powder for war purposes and explosives.

Given under my Seal of Office, this 17th day of April, 1937.

(Signed) SEÁN F. LEMASS,  
*Minister for Industry and Commerce.*

## NOTES

1. Payment for subsistence of observing officers carried on Saorstát Eireann merchant ships under the foregoing Order will be made by the Board at a standard rate or rates to be approved by the International Committee.
2. A certain measure of relief from port and pilotage charges incurred by Saorstát Eireann merchant ships calling at ports solely for the purpose of embarking or disembarking observing officers under the foregoing Order will be obtainable from the Board. Administrators and deputy administrators will, however, arrange where possible for observing officers to be embarked and disembarked under circumstances that will not necessitate such ships incurring pilotage or port charges.
3. The foregoing Order does not apply in respect of the Canary Islands, but an order will shortly be made applying a system of observation in respect of those islands.

#### IV. THE MERCHANT SHIPPING (SPANISH CIVIL WAR) (No. 2) ORDER, MAY 18, 1937<sup>4</sup>

WHEREAS by virtue of the Merchant Shipping (Spanish Civil War) Act, 1937 (Commencement) Order, 1937 (Statutory Rules and Orders, No. 51

<sup>4</sup> *Statutory Rules and Orders*, No. 104, 1937. English text supplied by the British Foreign Office through the courtesy of the Department of State, Washington.

of 1937), the Merchant Shipping (Spanish Civil War) Act, 1937 (No. 9 of 1937), came into operation on the 20th day of March, 1937:

AND WHEREAS it is enacted by sub-section (1) of Section 4 of the said Act that in order to fulfil the international obligations of the Government of Saorstát Éireann as one of the Governments represented on the International Committee for the Application of the Agreement regarding Non-Intervention in Spain and consisting of representatives of the respective Governments of Saorstát Éireann and several other countries, the Minister for Industry and Commerce may from time to time by order take all such steps and do all such things as shall appear to him to be necessary or proper to be done by the Government of Saorstát Éireann in respect of merchant shipping for the purpose of giving practical effect to the resolutions in relation to the observation of the frontiers of Spain from time to time passed by the said International Committee, and for that purpose and without prejudice to the generality of the foregoing provision the said Minister may, among other things, by order regulate, restrict, and control the movements of ships registered under the Merchant Shipping Acts, 1894 to 1933, whose ports of registry are situate in Saorstát Éireann in waters adjacent to Spain or proceeding to or coming from a port in Spain and provide for any matter ancillary or incidental to any provision inserted in such Order:

AND WHEREAS by sub-section (2) of the said Section 4 it is enacted that an order made under the said Section may declare an infringement of the provisions or any particular provision thereof to be an offence punishable by law:

Now, therefore, the Minister for Industry and Commerce, in exercise of the powers conferred on him by Section 4 of the Merchant Shipping (Spanish Civil War) Act, 1937 (No. 9 of 1937), and of every and any other power him in this behalf enabling, hereby orders as follows, that is to say:

1. This Order may be cited as the Merchant Shipping (Spanish Civil War) (No. 2) Order, 1937.

2. The Interpretation Act, 1923 (No. 46 of 1923), applies to the interpretation of this Order in like manner as it applies to the interpretation of an Act of the Oireachtas.

3. This Order shall come into operation on Wednesday, the 19th day of May, 1937.

4. Every expression to which a particular meaning is given by Article 4 of the Merchant Shipping (Spanish Civil War) Order, 1937 (Statutory Rules and Orders, No. 76 of 1937), for the purposes of that Order has in this Order the meaning so given to it.

5. The master of every Saorstát Éireann merchant ship proceeding to a port on the southeast coast of Spain, between Cape de Gata and Cape Oropesa shall cause such ship to pass through one of the following points or within a distance of not more than one and a half sea miles therefrom, that is to say—

(a) Cartagena Focal Point, that is to say, 180 degrees, 10 sea miles, from Escombrera Island light,



(b) Alicante Focal Point, that is to say, 090 degrees, 10 sea miles, from the group occulting light at the southern end of the breakwater,

(c) Valencia Focal Point, that is to say, 090 degrees, 10 sea miles, from the group flashing light at the end of the Dique Del Norte.

6. Any act which is an infringement of the provisions of this Order shall be an offence punishable by law.

7. Where the evidence of any person who is an administrator, deputy administrator, observing officer or officer commanding a vessel of the naval forces of Great Britain and Northern Ireland, France, Germany or Italy is required for the purposes of any prosecution in respect of an infringement of the provisions of this Order, such evidence may be taken on commission in the country where such person for the time being resides and as so taken shall be admissible for the purposes of such prosecution in any Court in The Irish Free State.

Given under my Seal of Office, this 18th day of May, 1937.

(Signed) SEÁN F. LEMASS,  
*Minister for Industry and Commerce.*

#### NOTES

1. German warships will carry out the procedure of observation prescribed in Article 16 of the Merchant Shipping (Spanish Civil War) Order, 1937, at the points specified in the foregoing Order.

2. The Master of a Saorstat Eireann merchant ship bound for a port on the southeast coast of Spain between Cape de Gata and Cape Oropesa is recommended—

(a) in case he is taking a course along the coast of Spain and within ten sea miles therefrom to fulfil the requirements of the foregoing Order at, as the case may be, the northernmost or the southernmost focal point,

(b) in case he is coming in towards the Spanish coast from the open sea (i.e., from a greater distance than ten sea miles) to fulfil the requirements of the foregoing Order at the focal point lying nearest to his route to the port to which he is bound.

#### 15

#### ITALY

#### I. ROYAL DECREE REGARDING THE ENFORCEMENT OF THE SEA OBSERVATION SCHEME AND THE SUPERVISION OF ITALIAN MERCHANT SHIPS PROCEEDING TO SPAIN, APRIL 19, 1937<sup>1</sup>

Seen Article 3, No. 2 of Act dated 31st January, 1926, No. 100;

Seen the Bill dated 15th February, 1937—XV, No. 102;

<sup>1</sup> *Gazette Ufficiale*, No. 108, May 11, 1937, pp. 1726–1728. English text supplied by the British Foreign Office through the courtesy of the Department of State, Washington.

Considering that His Majesty's Government and the Governments of other States have jointly undertaken to forbid all ships flying their respective flags to carry either volunteers or arms and war material destined to Spain or to any of the Spanish dependencies or to the Spanish zone in Morocco;

Considering that to this end the said Governments have agreed upon certain measures to which the above mentioned ships will have to be subject and upon the establishment of special means for observation;

Considering the urgent necessity of applying the said measures as soon as possible;

Having consulted the Cabinet;

On the joint proposals of our Secretary of State for Communications and of our Secretaries of State for the Navy, Foreign Affairs and Justice;

WE HAVE DECREED AND DO DECREE:

ARTICLE 1. It is forbidden to all ships flying the Italian flag to carry persons enlisted to take service with the forces fighting at present in Spain, in the Spanish dependencies or in the Spanish zone of Morocco, and likewise to carry arms and munitions destined to the above mentioned fighting forces.

ART. 2. Italian merchant ships proceeding to a Spanish port or to a port in one of the Spanish dependencies, or in the Spanish zone of Morocco, must call at one of the following ports, with the purpose of embarking Observing Officers according to the instructions of the local Administrator of the International Observation Office which has been to this purpose established in the same ports, as a consequence of the application of the Non-Intervention Agreement.

(a) At Gibraltar if the ship is passing in either direction through the Straits of Gibraltar, before reaching a Spanish port.

(b) At Dover or The Downs if the ship is passing through the English Channel proceeding from a port lying north of Dover.

(c) At Cherbourg if the ship is proceeding from a Channel port south of Dover.

(d) At Brest if the ship is proceeding from the Irish Free State or from Northern Ireland or from the Irish and Bristol Channels or from a port lying between Cherbourg (excluded) and Brest (included).

(e) At Le Verdon if the ship is proceeding from a port lying south of Brest on the French Atlantic coast or on the Bay of Biscay.

(f) At Palermo if the ship is proceeding from a Mediterranean port lying east of Longitude 12 East, or if she is crossing the Mediterranean proceeding from east of Longitude 12 East, unless she is obliged to call at Marseilles for commercial reasons, in which case she is authorized to embark Observing Officers at Marseilles.

(g) At Oran if the ship is proceeding from a North African port west of Longitude 12 East.

(h) At Marseilles if the ship is proceeding from Sardinia or Corsica

or from a French or Italian port lying between Longitude 12 East and Marseilles (included).

(i) At Cette if the ship is proceeding from a French port in the Mediterranean west of Marseilles.

(k) At Madeira, Gibraltar or Lisbon if the ship is proceeding from west of Longitude 15 West or from that part of the Atlantic Ocean which lies south of Latitude 28 North.

(l) At Gibraltar if the ship is proceeding from an Atlantic port in Morocco or from Lisbon in direction of a Spanish port lying north of Portugal.

(m) At Lisbon if the ship is proceeding from a Portuguese port.

Ships are authorized to call at Gibraltar instead of any other port, as long as they do it before calling at a Spanish port.

Until it is otherwise established through special instructions by the Ministry of Communications, it is not necessary for ships that are proceeding to the Canary Islands to embark Observing Officers.

The ships, both Italian and foreign, calling at Palermo for the sole purpose of embarking Observing Officers, will be considered as ships in distress and as such exempted from harbour dues.

ART. 3. When induced by reasons of technical or commercial convenience, the Masters or Owners of ships may ask of the Administrator of the Observation port at which they would be bound to call in accordance with Article 2 above, the permission to embark Observing Officers in a port other than the one above mentioned.

It will be the Administrator's task to examine the reasons set before him and either to accept or refuse the request.

The owners or masters of ships engaged in regular trade with Spanish ports or with ports in Spanish dependencies can, if they are ready to provide for the extra expenditure involved, obtain permission to have Observing Officers stationed permanently on board their vessels.

In this case their ships will be exempt from obligation of calling at one of the ports covered by Article 2.

ART. 4. The number of Observing Officers which Italian ships covered by Article 2 will have to embark is usually 2 or more, at the discretion of the Administrator of the International Observation Office. The Administrator has, however, the power to permit small ships or ships in ballast or ships conveying cargo in bulk to embark one Observing Officer only.

ART. 5. The embarkation of Observing Officers in one of the ports mentioned in Article 2—under schedule (a) and following—must take place on the shortest possible notice from the time in which a request for them was made, and in any case not more than 4 hours from the time in which the shipmaster or his agent have notified the ship's arrival to the local Administrator.

If the Administrator is not able to provide for the embarkation of Observing Officers within the above limit of time, he will have to provide

the ship owner with a certificate proving that his ship had called at that port with the purpose of embarking Observing Officers and had been authorized to sail again without them owing to the impossibility of obtaining Observing Officers on the spot.

ART. 6. The owners of vessels (covered by Article 2) will be under obligation to provide accommodation for the Observing Officers equivalent to that normally provided for officers such as mates, and in the case of a passenger ship, for first class passengers.

In cases where there is no accommodation classed as first class, the accommodation to be provided will be of the highest class in the ship.

Ship owners will be placed under obligation to provide for Observing Officers stationed on their vessels, messing similar to that provided for the master of the ship concerned or for first-class passengers, for which payment will be made from the International Fund at a standard rate or rates to be approved by the International Committee.

The Observing Officers will be carried on the same conditions with regard to liability for life and property as are the passengers on the vessel in question.

ART. 7. The masters of ships covered by Article 2 above are bound to assist Observing Officers in every way in their task of ascertaining:

(a) whether any arms or war material of the classes covered by the Non-Intervention Agreement are being unloaded in Spanish ports or in ports in the Spanish dependencies or in the Spanish zone in Morocco.

(b) whether any persons enlisted to take service with the forces fighting at present in Spain, in the Spanish dependencies or in the Spanish zone of Morocco are being disembarked in these ports.

(c) on leaving any Spanish port, whether any passenger or member of the crew, who may have left the ship while in port has failed to return on board.

To this end the masters of the ships will have to provide the Observing Officers at any convenient time with any information required regarding the cargo which is to be consigned in Spanish ports and to consent to the inspection of all papers relating thereto.

The Observing Officers are also entitled, in the presence of the master or in the presence of an officer appointed by him for this purpose, to question passengers, officers and crew proceeding to Spanish ports and to examine the passports of passengers and the identity papers of the officers and members of the crew, as well as to obtain from the master any information required in this regard.

The Observing Officers have the right to be present at the unloading of any goods or disembarkation of any persons in a Spanish port, and to require of the master to have opened for inspection any package which is being unloaded and which the Observing Officer has reasonable grounds for suspecting to contain arms or war material.

The master will be required to have all unpacking, repacking and sealing up done in the presence of the Observing Officers or of officers appointed by

them, whose intervention will have to be made to appear in the report which will be made in justification of the action undertaken.

ART. 8. The Administrator of the International Observation Office, who has provided for the embarkation of Observing Officers, is entitled to require that the Observing Officers should be disembarked in a port which may not entail for the ship concerned an unreasonable deviation from the route which she intends to follow after having left the Spanish waters. To this purpose the master is under the obligation to disembark the Observing Officers, according to instructions received from the Administrator, in the port nearest to the route which the ship intends to follow or in any other landing place that may not import more than 50 miles' additional steaming.

ART. 9. The Administrator of the International Observation Office established in Palermo, and his subordinates, will be granted the immunities normally accorded to diplomatic and consular officers.

They shall have full liberty to communicate with the Chief Administrator residing in London and with the Administrators or Deputy Administrators residing in the foreign ports mentioned in Article 2, and they will be granted every facility to enable them to exercise the rights and to discharge the duties assigned to them, and, in particular, these officers will be granted the same priority for telephone and telegraph services as are accorded to diplomatic officers.

The Observing Officers when engaged on duty at sea will be granted the same priority for telephone and telegraph services as are granted to the service messages of the master of the ship.

ART. 10. The owners and masters of Italian ships will take all measures in their power to prevent the landing in Spanish ports through the medium of their respective ships, of arms, war material and passengers which the Observing Officers may have ascertained to be carried in defiance of the present convention.

ART. 11. Italian ships proceeding to Spanish ports on arriving within 10 miles of the nearest spot on the Spanish coast will have to be subject to the system of naval observation which has been undertaken by :

(a) the naval vessels of Great Britain, on the northern coast of Spain from the French frontier to Cape Busto;

(b) the naval vessels of France on the northwest coast of Spain from Cape Busto to the Portuguese frontier;

(c) the naval vessels of Great Britain on the southern coast of Spain from the Portuguese frontier to Cape de Gata;

(d) the naval vessels of Germany on the southeast coast of Spain between Cape de Gata and Cape Oropesa;

(e) the naval vessels of Italy on the eastern coast of Spain from Cape Oropesa to the French frontier;

(f) the naval vessels of France on the coast of Spanish Morocco;

(g) the naval vessels of France round the Islands of Iviza and Majorca;

(*h*) the naval vessels of Italy round the Island of Minorca.

ART. 12. Naval vessels engaged in the task of naval observation will hoist the North Sea Fisheries Convention pennant.

Italian merchant ships proceeding to Spanish ports, having embarked the Observing Officers as under Article 2, or being provided with a certificate as under the second schedule of Article 5, on finding themselves within a zone of 10 miles from the Spanish coast are bound to hoist the pennant described in the instructions issued by the Secretary of State for Communications.

ART. 13. Officers in command of naval vessels engaged in naval observation have the right:

(*a*) to verify, within the above mentioned 10 miles limit, the identity of all Italian ships, or of ships of other countries who are parties to the Non-Intervention Agreement which may be proceeding to any port in Spain or in the Spanish dependencies, and to this end they can order such ships to stop, they can board them, examine their certificates of registry and clearance documents and make sure of the presence of Observing Officers;

(*b*) to establish whether the ship has called at one of the observation ports mentioned in Article 2 and whether she has embarked Observing Officers or has been exempt from doing so according to Article 5;

(*c*) to establish in each of the zones mentioned in Article 11, special focal areas through which all ships entering these zones will be required to pass.

ART. 14. No right of search has been accorded to naval vessels engaged in naval observation, but whenever a ship fails to comply with the instructions they may receive in accordance with Article 13 above, or has not complied with the obligations mentioned in Article 2 or has improperly flown the special distinguishing pennant mentioned in Article 12, the officer in command of such a naval vessel will draw the attention of the master of the ship to his obligations under the Agreement and will point out to him that he will be committing an offence against the laws of his own country unless he submits to observation before reaching a Spanish port.

Non-compliance by the ship will be regarded as evidence that she has committed a breach of the present convention.

ART. 15. Any necessary evidence of the officers or crew of the naval vessel or of the Administrators or Deputy Administrators, will, whenever possible, be taken upon commission.

ART. 16. The masters of the ships who are not complying with the rules set in the above articles will be subject to fine.

ART. 17. The Secretary of State for Communications is authorized to issue the rules for the application of the present Bill.

The present Bill will be enforced from the day of its publication, and will be laid down before Parliament for its conversion into Act.

We order, etc. . . .

II. ROYAL DECREE-LAW OF NOVEMBER 5, 1937, AMENDING ARTICLE 2 OF THE ROYAL DECREE-LAW OF APRIL 19, 1937<sup>2</sup>*(Translation)*

In consideration of Article 3, No. 2, of the Law of January 31, 1926, No. 100;

In consideration of the Royal Decree-Law of February 15, 1937, No. 102;

In consideration of the Royal Decree-Law of April 19, 1937, No. 562, concerning the application to all merchant vessels of the Accord of non-intervention in the Spanish conflict;

Considering that the Committee of non-intervention has adopted a modification of the plan of naval observation;

Whereas there is urgent and absolute necessity of executing the aforementioned modification as soon as possible;

Having received the consent of the Council of Ministers;

On the proposition of our Minister the Secretary of State for Communications, in concert with the Ministers for the Marine, for Foreign Affairs and for Grace and Justice;

I have decreed and hereby decree:

ARTICLE 1. Article 2 of the Royal Decree-Law of April 19, 1937, No. 562, is abrogated and the following is substituted therefor:

'Italian merchant vessels bound for a port of Spain or of the Spanish possessions or of the Spanish Zone of Morocco, shall proceed to one of the ports indicated below to take on those Official Observers which shall be prescribed by the local administrator of the International Office of Observation expressly instituted therefor, for the purpose of effecting the application of the Accord of Non-Intervention in Spain:

(a) To Gibraltar whenever passing, in one direction or the other, through the Straits of Gibraltar, previous to touching at a Spanish port, it being understood that this rule prevails over all following rules, which apply henceforth to all vessels which approach a port of Spain or of the Spanish possessions or the Spanish Zone of Morocco prior to passing through the Straits of Gibraltar or without being obliged to pass through the Straits;

(b) To Dover if the vessel, excluding the cases of those which fall under letters (n) and (o), is obliged to pass through the English Channel coming from a port situated north of Dover;

(c) To Dover or to Falmouth if the vessel, excluding the cases of those which fall under the preceding letter (b), and all those which come under the succeeding letters (n), (o), (p), is coming from a Channel port to the south of Dover;

(d) To Falmouth if the vessel, excluding the cases of those which fall under letters (n), (o), proceeds from the Irish Free State or from

<sup>2</sup> *Gazzetta Ufficiale*, No. 291, Dec. 17, 1937, pp. 4566-4567.

North Ireland, or from the west coast of Scotland or from the Irish Channel, or from that of Bristol;

(*e*) To Le Verdon if the vessel, excluding the cases of those which fall under the preceding letter (*b*), proceeds from a port situated to the south of Brest on the French coast of the Atlantic or of the Bay of Biscay;

(*f*) To Palermo if it is proceeding from a Mediterranean port situated to the east of longitude 12 degrees east or crossing the Mediterranean coming from the east of that meridian, unless for commercial reasons it is necessary to resort to Marseilles, in which case it is authorized to take on Observers at Marseilles;

(*g*) To Oran if the vessel, excluding the cases of those which fall under preceding letter (*f*), proceeds from a port of North Africa to the west of longitude 12 degrees east of Greenwich;

(*h*) To Marseilles if the vessel, excluding the cases of those which fall under preceding letter (*f*), proceeds from Sardinia or Corsica or from an Italian or French port situated between longitude 12 degrees east of Greenwich and Marseilles;

(*i*) To Cette if the vessel, excluding the cases of those which fall under preceding letter (*f*), proceeds from a French Mediterranean port to the west of Marseilles;

(*k*) To Madeira or to Gibraltar or to Lisbon if it is proceeding from the west of longitude 15 degrees west of Greenwich or from the Atlantic Ocean to the south of longitude 28 degrees north;

(*l*) To Gibraltar if it is proceeding from an Atlantic port of Morocco or to Lisbon if it is going to a Spanish port situated to the north of Portugal;

(*m*) To Lisbon if it is proceeding from a Portuguese port;

(*n*) To Lisbon if the vessel is proceeding to a Spanish port:

1. through the English Channel from a port situated to the north of Dover;
2. from a Channel port to the south of Dover;
3. from a port of the Irish Free State or from North Ireland or from the west coast of Scotland or from the Irish Channel or from that of Bristol;
4. from a port lying between Cherbourg and Brest,

but is proceeding to a Portuguese port prior to calling at a Spanish port;

(*o*) To Dover or to Falmouth or to Le Verdon, whichever is the more convenient, if the vessel proceeds:

1. through the English Channel from a port to the north of Dover;
2. from a port to the south of Dover;
3. from a port of the Irish Free State or from North Ireland or from the west coast of Scotland or from the Irish Channel or from that of Bristol;
4. from a port lying between Cherbourg and Brest,

but is proceeding to a French port prior to calling at a port in Spain;



(p) To Falmouth or to Le Verdon, whichever is the more convenient, if the vessel, excluding the cases of those which fall under letters (n) or (o), proceeds from a port lying between Cherbourg and Brest.

‘Until it shall be otherwise established by provision of the Minister for Communications, the embarking of Observers is not obligatory for vessels which touch at ports of the Canary Islands.

‘National or foreign vessels which land at the port of Palermo for the sole purpose of taking on the Official Observer shall be relieved of anchorage fees.’

ART. 2. The present Decree shall enter into force from the day of its publication.

The present Decree will be presented to Parliament for conversion into law.

## 16

## LATVIA

## I. DECREE OF MINISTRY OF FINANCE REGARDING TRANSPORTATION OF PERSONS TO SPAIN, FEBRUARY 23, 1937

(See Appendix V—Latvia)

II. DECREE OF MINISTER OF FINANCE, REGARDING THE CONTROL OF LATVIAN MERCHANT VESSELS PROCEEDING TO SPAIN, APRIL 19, 1937<sup>1</sup>

On the basis of the decision reached by the Cabinet of Ministers on the 9th March, 1937, regarding the control of merchant vessels proceeding to Spanish ports, I decree the following:

1. Latvian merchant ships proceeding to Spanish ports, to Spanish colonial ports or to ports in Spanish Morocco must call at the undermentioned control ports and embark observers, in the following order:

1. If the ship is passing in either direction through the Straits of Gibraltar before calling at a Spanish port she must call at Gibraltar. This rule overrides all the following rules which therefore only apply to ships which do not pass through the Straits of Gibraltar.

2. If the ship is passing through the English Channel on her way to a Spanish port from a port lying to the north of Dover, she will call either at Dover or at The Downs.

3. If the ship starts her voyage from an English Channel port south of Dover, then she will call at Cherbourg.

4. If the ship is proceeding from a port of the Irish Free State or Northern Ireland, or from the Irish and Bristol Channels, or from a port between Cherbourg and Brest, she will call at Brest.

5. If the ship is proceeding from a French Atlantic or Biscayan port south of Brest, she will call at Le Verdon.

<sup>1</sup> *Valdibas Vestnesis* (Government Herald), April 19, 1937. English text supplied by the British Foreign Office through the courtesy of the Department of State, Washington.

6. If the ship is approaching westward through the Mediterranean, or from a port in the Mediterranean, east of Longitude  $12^{\circ}$  East, she must call at Palermo, unless for commercial reasons she is proceeding to Marseilles, in which case she shall embark observers at that port.

7. If the ship is proceeding from a North African port west of Longitude  $12^{\circ}$  East, she must call at Oran.

8. If the ship is proceeding from a port on the French or Italian coast between Marseilles and Longitude  $12^{\circ}$  East, or from Corsica or Sardinia, she must call at Marseilles.

9. If the ship is proceeding from a French Mediterranean port west of Marseilles, she must call at Cette.

10. If the ship is approaching from the west of Longitude  $15^{\circ}$  West, or is approaching in the Atlantic from the southward of Latitude  $28^{\circ}$  North, she must call at one of the following ports, viz., Madeira, or Gibraltar, or Lisbon.

11. If the ship is coming from a port on the Atlantic seaboard of Morocco, she will call at Gibraltar, or, in the case of ships proceeding to Spanish ports north of Portugal, at Lisbon.

12. If the ship is coming from a Portuguese port, she will call at Lisbon.

The question of the control ports at which ships proceeding to the Canary Islands must call is for the time being left open.

The principal control ports which have been fixed are the following: The Downs or Dover, Cherbourg, Lisbon, Gibraltar, Marseilles, Palermo and Madeira.

If at the port of control the International Non-Intervention Committee's Administrator is unable to embark an observer on the ship then he will give to the captain a document certifying that his ship called at the port in order to comply with the obligation of vessels under the Non-Intervention Agreement and that the Administrator had no observer at his disposal to embark on the ship.

The International Non-Intervention Committee's Administration at the principal control ports may fix also other ports of embarkation of observers.

Ships carrying observers of the International Non-Intervention Committee or to which has been granted the above-mentioned certificate of having visited a control port must fly the pennant prescribed by the Committee. The flying of this pennant without the presence on board of an observer, or without the possession of the said certificate, is forbidden.

ii. The provision of accommodation at sea for observers.

Shipowners must provide and captains must afford to observers suitable living accommodation. The living accommodation for an observer should be the same as is normally provided for ships' officers, such as, for instance, mates. Observers should be given messing similar to that provided for ships' captains, for which payment will be made by the International Non-Intervention Committee according to its standard rates.

iii. The disembarkation of observers.

After leaving the Spanish port the observers must be disembarked, at the

discretion of the International Non-Intervention Committee's administrator at the port of embarkation, at the control port nearest to the route of the vessel, or at any other port to reach which would entail not more than 50 sea miles' deviation from the ship's arranged course.

rv. The rights of observers.

1. At any time during the voyage the observer has the right, in the presence of the captain or in that of an officer nominated by him, to interrogate passengers and the ship's personnel and to examine the passports of passengers and the identification papers of the ship's personnel.

2. At any time during the voyage the observer has the right to question the captain as to the cargo being carried to a Spanish port and to inspect the papers relating thereto.

3. The observer has the right to take part in, i.e., to be present at, any unloading of cargo or disembarkation of passengers in a Spanish port. At the observer's request the captain must have opened for inspection any package which is being unloaded, about the contents of which the observer has any doubt that they might consist of war materials being sent to Spain in contravention of the Non-Intervention Agreement. The observer has also the right to have carried out any necessary unpacking, repacking and sealing-up.

The captain and crew must, to the best of their ability, assist the observer in the fulfilment of his duties. In Spanish ports captains must take all possible steps against the landing of war material.

v. Naval observation of the Spanish coasts.

Within a zone of ten sea miles from the coasts of Spain or the Spanish colonies any Latvian ship must stop at the request of the naval vessel patrolling there. The patrolling naval vessel will fly the pennant which has been agreed upon by the International Non-Intervention Committee. The person appointed by the naval vessel's commander has the right to board the Latvian ship stopped, to examine the certificate of registry and clearance documents and to ascertain whether there is on board an observer of the International Non-Intervention Committee or whether there has been granted to the ship at a control port a certificate that she has called at that port.

The captains of ships must carry out the instructions of the naval vessels' commanders.

vi. Compensation for ships' delay and port dues.

For the delay of a ship or its diversion from its route in connection with the embarkation or disembarkation ship owners receive no compensation provided that at the port of control the International Non-Intervention Committee's Administrator embarks the observer at the earliest possible moment, and, in any case, not later than four hours after the captain or the ship's agent shall have reported its arrival to the Administration. When calling at a port only for the purpose of embarking or disembarking an observer a ship will be exempt from all port dues and fees.

Transgressors against this law are liable to penalties under the Law.  
This decree comes into force on the day of its publication.

(Signed) L. EKIS, *Minister of Finance*.

A. OZOLS, *Director of the Marine Department*.

III. AN AMENDATORY DECREE OF JUNE 17, 1937 (TEXT NOT OBTAINABLE)  
PROVIDED FOR A CHANGE IN OBSERVATION PORTS, THE PORT OF CHER-  
BOURG HAVING BEEN EXCLUDED FROM THE LIST OF SUCH PORTS

17

LITHUANIA

REGULATIONS REGARDING SUBMISSION TO OBSERVATION AND CONTROL OF  
MERCHANT SHIPS ISSUED BY THE INSPECTOR OF NAVIGATION, MARCH  
25, 1937<sup>1</sup>

(Translation)

I. All vessels whose destination is Spain or Spanish territory must before reaching a port in Spain or Spanish territory call at any one of the below-mentioned control ports and there take aboard one or more inspectors who will be authorized to examine or supervise the unloading of the ship in Spanish ports.

Control officers will be assigned by the administrators of the international committee. If for some reason the administrators will be unable to assign a control officer to the ship there will be issued to the captain a certificate proving that his ship had called at the control port to take aboard a control officer. The ship on which there is a control officer or which has received a certificate, will carry a signal flag. It is forbidden to carry such a flag if there is no control officer aboard or if the ship has not the proper certificate.

The captains of vessels shall grant the control officers the power to perform their assigned duties and will disembark them later in those ports which the administration of the International Committee will indicate. The control officers have the right at any time during the voyage to obtain all the information about the ship's cargo from the captain and to control all documents pertaining to the cargo; in the presence of the captain or his assistants, to question passengers going to Spanish ports and to examine their documents; to participate at the unloading of the goods and at the disembarking of the passengers at the Spanish port; to demand all parcels to be opened if there is sufficient reason to believe that they contain forbidden material.

Owners of ships and captains must take all precautions to see that prohibited material which the control officer will indicate must not be unloaded in Spanish ports. The control officers aboard ship shall obtain suitable

<sup>1</sup> Text supplied by the Government of Lithuania.

quarters which normally would be given to the ships' officers, and board like that given to the captain. The International Committee will grant reimbursement for the control officers' board and accommodations.

11. Ships shall stop at control ports and there embark control officers assigned by the administrators of the International Committee in the following manner:

1. Ships which sail through the Straits of Gibraltar in either direction, must before calling at Spanish port call at Port of Gibraltar. This stipulation includes all the below mentioned ones which for that reason only pertain to those ships which do not sail through the Straits of Gibraltar.

2. If a ship sails through the English Channel towards Spain from ports north of Dover, it must call at Dover or The Downs.

3. If a ship starts a voyage from any one of the English Channel ports south from Dover, it must call at Cherbourg.

4. If a ship leaves the Irish Free State or North Ireland, from the Irish Sea or the Bristol Channel or from a port between Cherbourg and Brest, it must call at Brest.

5. If a ship starts from a French Atlantic port or from a port in the Bay of Biscay south of Brest, it must call at Le Verdon.

6. If a ship sails westerly through the Mediterranean Sea or from any of the Mediterranean ports east of longitude  $12^{\circ}$  East, it must call at Palermo, except in those instances when a ship for commercial reasons calls at Marseilles. In this case it is permitted to embark a control officer at Marseilles.

7. If a ship starts a voyage from a North African port which is west of longitude  $12^{\circ}$  East, it should stop at Oran.

8. If a ship starts a voyage from Italian or French ports west of longitude  $12^{\circ}$  East or from Corsica or Sardinia, it must call at Marseilles.

9. If a ship starts a trip from any French Mediterranean port west of Marseilles, it must call at Cette.

10. If a ship sails from the west of  $15^{\circ}$  West or if it sails in the Atlantic south of  $23^{\circ}$  North, it should call at either Madeira, Gibraltar or Lisbon.

11. If a ship sails from a port on the Moroccan Atlantic coast, it must stop at Gibraltar, but if a ship sails to a Spanish port that is north of Portugal, it should call at Lisbon.

12. If a ship sails from a Portuguese port, it must call at Lisbon.

For the time being, the question is left open as to which control port ships should stop at when sailing to Canary Island ports.

The most important control ports are the following: The Downs or Dover, Cherbourg, Lisbon, Gibraltar, Marseilles, Palermo and Madeira.

The owner of the vessel will receive no reimbursement for the interruption of the vessel's voyage or for demurrage for the purpose of embarking or disembarking a Control Officer; the administration of the International Non-Intervention Committee will, however, embark a Control Officer in the control port in as short time as possible, and, in each instance, in not more than four hours, beginning from the time the master notified the adminis-

tration of the vessel's arrival. A vessel stopping at any port for the sole reason of embarking or disembarking a Control Officer does not pay port charges.

III. Inside the ten-marine-mile limit there is a warship control instituted. (English, French, German, Italian ships maintain this control.) Patrol ships will fly a certain small flag. Every commercial vessel must stop when the patrol ship so commands. Designated officers of the patrol ship will have the right to go on board a stopped vessel and verify the ship's documents and to assure themselves that there is a Control Officer aboard or that it has obtained a certificate at a control port.

## 18

## LUXEMBURG

No measures adopted.

## 19

## THE NETHERLANDS

I. ROYAL DECREE NO. 17 OF MARCH 4, 1937, RELATING TO THE CARRIAGE OF MATERIALS OF WAR AND VOLUNTEERS TO SPAIN <sup>1</sup>

(*Translation*)

We, Wilhelmina, . . .

Upon the proposal of Our Minister of Foreign Affairs, in accord with Our Ministers of National Defense, of Waterways, of Commerce, of Industry and of Navigation, and of Colonies, of February 26, 1937 (Direction Juridique, No. 7072);

Considering that it is indispensable, for furthering the international collaboration for putting an end to the hostilities in Spain, to take measures concerning Netherlands vessels touching at Spanish ports and transporting materials of war or volunteers;

In view of the law relating to sanctions in 1935;

Considering, moreover, that there is present a case of an urgent nature, such as is provided for at the beginning of article 70 of the constitutional law of the Netherlands Indies;

The Council of State having agreed (Notice of March 2, 1937, No. 31);

In view of the further report of Our Minister of Foreign Affairs under date of March 3, 1937 (Direction Juridique No. 7822);

We have resolved and we hereby enact by these presents:

## ARTICLE I

In this decree it shall be understood by:

(a) Spain: the territory of Spain in Europe and outside of Europe, and the zones of the Spanish protectorate in Morocco;

<sup>1</sup> *Staatsblad* No. 160, *Nederlandsche Staatscourant*, No. 48, March 11, 1937.

(b) Netherlands vessels: a vessel flying the Netherlands flag or registered in the Netherlands, in the Netherlands Indies, or in Surinam or Curaçao;

(c) Material of war:

*Category I—*

1. Rifles and carbines as well as their barrels [*canons*].
2. Machine guns, automatic rifles or carbines and automatic pistols of all calibers, as well as their barrels.
3. Guns, howitzers and mortars of all calibers, as well as their carriages, breaches [*bouches à feu*] and recoil buffers.
4. Ammunition for the arms enumerated under numbers 1 and 2 above, projectiles, filled and unfilled, for the arms enumerated under number 3 above and propulsive charges prepared for these arms.

5. Grenades, bombs, torpedoes and mines, filled and unfilled, as well as the apparatus for their discharge or employment.

Tanks [*chars de combat*], armored vehicles and trains; armor plate of all kinds.

*Category II—*

Vessels of war of all kinds, including aircraft carriers and submarines.

*Category III—*

1. Aircraft, assembled or dismantled, heavier than air and lighter than air, as well as their propellers, fuselages, gun-turrets, hulls, tail units and under-carriage units.

2. Airplane motors.

*Category IV—*

Revolvers and automatic pistols of a greater weight than 630 grams, as well as the munitions for these articles.

*Category V—*

1. Flame-throwers and all other projectors used for chemical or incendiary warfare.

2. Mustard gas, lewisite, ethyldichlorarsine, methyldichlorarsine, and all other products destined for chemical or incendiary warfare.

3. Powder for war purposes and explosives.

*Category VI—*

All objects which are manifestly component parts of the materials of war provided for in Categories I to V.

ART. 2

It is forbidden to the proprietor, to the shipowner, including the book-keepers of a firm of shipowners—and to the captain of a Netherlands vessel to give an order, to favor or to tolerate a vessel touching at a Spanish port if material of war constitutes part of the cargo of the vessel.

## ART. 3

In case a society having a civil personality or a foundation shall be the proprietor or shipowner, the penalty for the infraction provided for in Article 2 is incurred by every member of the directors which is a party to the fact.

## ART. 4

The captain of a Netherlands vessel who during a voyage touches, intends to touch, or has touched at a port of Spain, is obliged :

(a) To note without delay in his log all loadings of merchandise to be unloaded in this port, as well as loadings of materials of war, for whatever destination;

(b) To exhibit the nature of consignments each time that it is required by an official charged with ascertaining infractions of the present Decree, and to cause to be unpacked merchandises for that purpose, in default of which it may be done at the expense and risk of the captain;

(c) In case of the landing of material of war, to note the fact in the log and to obtain a certificate from the Netherlands consular official, or, in his absence, from the customs authority of the place, stating the number, the nature and the marks of the parcels;

(d) To exhibit without delay, at the request of every official charged with the ascertainment of infractions of the present Decree, all papers of the vessel and of the cargo relative to that voyage.

## ART. 5

The captain of a Netherlands vessel is forbidden to touch at a port in Spain if he is transporting persons :

(a) Who he knows or has reasons to presume are en route to Spain with a view to taking service in the armed forces;

(b) Who he knows or has reason to presume are en route to Spain without passports provided with the special visa required for the voyage to Spain, according to the prescriptions of the Government of the country issuing the passports.

## ART. 6

Netherlands consular officials, including persons charged with the administration of Netherlands consular posts—and officials of the Inspection of Navigation are charged with the ascertainment of infractions of the present Decree.

## ART. 7

The provisions of the present Decree are not applicable in the respective territories to the materials of war nor to the persons indicated embarked or disembarked before the date of the entry into force of the present Decree.



## ART. 8

The present Decree shall enter into effect for The Netherlands, the Netherlands Indies, Surinam and Curaçao the day after its publication in the respective territory.

Our Ministers of Foreign Affairs, of National Defense, of Waterways, of Commerce, of Industry and Navigation, and of Colonies, are, each so far as he is concerned, charged with the execution of the present Decree, which will be published in the Bulletin of Laws, the Official Journal and the Official Bulletins, respectively, of the Netherlands Indies, Surinam and Curaçao and of which a copy will be sent to the Council of State.

II. ROYAL DECREE OF MARCH 30, 1937, REQUIRING NETHERLANDS' VESSELS TO COMPLY WITH THE OBSERVATION AND CONTROL SCHEME <sup>2</sup>

(Translation)

We, Wilhelmina, . . .

On the proposal of our Minister of Foreign Affairs, in accord with Our Ministers of National Defense, together with those of Waterways, of Commerce, of Industry and of Navigation, and of Colonies, of March 20, 1937 (Direction Juridique, No. 10354a);

Considering that an international collaboration has created a regime of control for the entry into Spain of materials of war and of volunteers;

Considering that it is indispensable to take measures on the subject of this control on account of the visitation at Spanish ports by vessels of the Netherlands;

In view of the law relating to sanctions of 1935;

Considering, moreover, that there is present a case of an urgent nature, as provided for at the beginning of Article 70 of the Constitutional Law of the Netherlands Indies;

The Council of State having agreed (Notice of March 23, 1937, No. 40);

In view of the former report of Our Minister of Foreign Affairs of March 25, 1937 (Direction Juridique, No. 11090);

We have resolved and we hereby enact by these presents:

ARTICLE I

In this Decree it shall be understood by:

(a) Spain: the Spanish territory in Europe and outside of Europe and the Spanish Zone of Morocco. Unless otherwise indicated, the present Decree is not applicable to the Canary Islands;

(b) Netherlands Vessel: a vessel flying the Netherlands flag or registered in The Netherlands, or the Netherlands Indies, or Surinam or at Curaçao;

<sup>2</sup> *Staatsblad* No. 161, *Nederlandsche Staatscourant*, No. 63, April 5, 1937.

## THE SPANISH CIVIL STRIFE

(c) Material of War: . . . [The decree recites the same articles and commodities here that may be found in the Royal Decree of March 4, 1937, reproduced above.]

(d) International Controllers: persons charged by the "International Board of Non-Intervention in Spain" or in its name, with exercising the control on board vessels touching at a Spanish port.

## ART. 2

The captain of a Netherlands vessel is forbidden to touch his vessel at a Spanish port without first submitting to the procedure established in the following articles regarding international control.

## ART. 3

Submission to the control provided for in Article 2 includes the obligation:

(a) In a certain voyage, before touching at a Spanish port, to enter into a port provided for by Article 7, and there to take on board one or more international controllers designated by the Agent of the "Board" mentioned in Article 1, to keep the controller or the controllers on board until after the departure from the last port in Spain on this voyage and to give him (them) freedom to carry out his (their) task;

(b) To undergo an examination by the ships of war charged with international control of the entrances to the ports of Spain.

## ART. 4

In order to carry out the obligation provided for in Article 3, section (a), the captain of a Netherlands vessel is obliged to:

(a) Furnish to the international controllers on board accommodations and—at reasonable rates—board;

(b) Give to the international controllers during the voyage at appropriate times all of the necessary information regarding the cargo consigned to Spanish ports, regarding passengers and members of the crew and to allow these controllers to take note of all the papers bearing upon them;

(c) To give to the international controllers during the voyage, at appropriate hours, the opportunity to question, in the presence of himself or of an officer on board designated by himself, passengers en route to a Spanish port and the members of the crew, as well as to make an examination of the passports of the passengers and the papers of identity of the members of the crew;

(d) To allow the international controllers to be present at the time of the discharge of merchandise and at the debarkation of persons in a Spanish port with a view to determining whether material of war or volunteers are being landed; at the same time to give the opportunity to these

controllers to require to be undone or opened at their request any object presumed to contain materials of war before it may be discharged;

(e) To furnish to the international controllers the opportunity of verifying whether, on the departure from a Spanish port, passengers or members of the crew who left the ship during its sojourn in the port, have returned on board;

(f) To give to the international controllers the same priority pertaining to himself in the use of the means of communication on board; it is clearly understood that on their demand the international controllers will take rank above the captain;

(g) After the departure from the last Spanish port, to give to the international controllers opportunity to leave the vessel at a port provided for in Article 7 which is nearest to the route being followed by the vessel, but it is clearly to be understood that, if the desire is expressed, the debarkation shall take place at another port, provided that this debarkation does not necessitate a prolongation of the distance exceeding 50 marine miles.

#### ART. 5

Anybody on board a Netherlands vessel, which touches during its voyage at a Spanish port, is obliged to give to the international controllers in full truth the information provided for in Article 4 and to exhibit the papers indicated there.

#### ART. 6

Notwithstanding the provisions of Article 3, section (a), the captain of a Netherlands vessel:

(a) Will not be obliged to touch at one of the ports provided for in Article 7, if a special arrangement is made with the "Board of Non-Intervention in Spain," according to the terms of which the international controllers come on board in another manner or are stationed on board;

(b) Will not be obliged to take the international controllers on board if he shall have received a certificate from the Agent of the "Board" provided for by Article 1 in the port of call, stating that the ship has touched at the port but that in the four hours after the notification there are no international observers available for the vessel, or that for other reasons, he has been accorded a relaxation from the obligation to take on board international controllers.

#### ART. 7

The ports at which the captain of a Netherlands vessel, according to the terms of Article 3, section (a), is required to touch, according to the manner to be fixed by Us, before entering a Spanish port, are the following: The Downs (or Dover), Cherbourg, Lisbon, Gibraltar, Marseilles, Palermo and Madeira and the ports to be designated later by Us.

## THE SPANISH CIVIL STRIFE

## ART. 8

(1) Conformable to the obligation provided for in Article 3, section (b), the captain of a Netherlands vessel is required to submit, on demand, to examination on the part of the officers of the ships of war of certain countries to be designated by Us for each Zone to be defined under this report. The examination includes the right to:

(a) Stop a Netherlands vessel being en route for Spain;

(b) Come on board for the verification of the identity of the Netherlands vessel by taking note of the certificate of registry and the clearance papers;

(c) To verify whether the international controllers are on board or whether the captain of the vessel is in possession of a certificate provided for in Article 6, section (b).

(2) Furthermore, the captain of a Netherlands vessel is required, according to the obligation set forth in Article 3, section (b), to follow the routes to be prescribed in passing through the Zones before the Spanish coasts to be determined by Us.

## ART. 9

(1) The captain of a Netherlands vessel is required to carry a pennant to be determined subsequently by Us during a voyage to a Spanish port, which shall be taken on board by the international controllers or when he has obtained the special certificate provided for in Article 6, section (b);

(2) Except in the case provided above in paragraph one, the captain of a Netherlands vessel is forbidden to fly such a pennant.

## ART. 10

The measures which are provided for in Articles 1, 7, 8 and 9, will be taken by Us on the proposition of Our Minister of Foreign Affairs, in accord with Our Ministers of National Defense, together with those of Waterways, of Commerce, of Industry and of Navigation, and of Colonies.

## ART. 11

Netherlands Consular Functionaries are charged with the responsibility of finding infractions of this Decree, as well as persons charged with the management of Netherlands consular posts, the officials of the Inspection of Navigation and the officers of Netherlands men-of-war.

## ART. 12

(1) The present Decree will enter into force for The Netherlands, the Netherlands Indies, Surinam and Curaçao at a date to be fixed later by Us after the publication in the territory affected.

(2) At the same time We shall fix the dates of its entry into force so far

as Netherlands vessels are concerned as well as the date for the special dispositions mentioned in the present Decree.

Our Ministers of Foreign Affairs, of National Defense, of Waterways, of Commerce, of Industry and of Navigation, and of Colonies, are, each so far as he is concerned, charged with the execution of the present Decree, which will be published in the Bulletin of Laws, the Official Journal and in the Official Bulletins of the Netherlands Indies, Surinam and Curaçao, and of which a copy will be sent to the Council of State.

### III. ROYAL DECREE NO. 12, OF MARCH 30, 1937, REQUIRING VESSELS TO STOP AT CERTAIN PORTS FOR OBSERVATION OFFICERS <sup>3</sup>

(Translation)

We, Wilhelmina, . . .

On the proposal of Our Minister of Foreign Affairs, in concert with Our Ministers of National Defense, together with those of Waterways, of Commerce, of Industry and Navigation and of Colonies, of March 20, 1937 (*Direction Juridique*, No. 10354-B);

In view of Articles 7 and 8 of our Decree of March 30, 1937, No. 10, we have resolved and we hereby enact:

#### ARTICLE I

The captain of a Netherlands vessel, in touching at one of the ports provided for in Article 7 of our Decree of March 30, 1937, No. 10, is obliged to observe the following prescriptions:

[Here follows an enumeration identical with that contained in Article 12, page 10, of the Annex to the Observation and Control Scheme, for which see Appendix VI.]

#### ART. 2

1. The control provided for in Article 8 of our Decree of March 30, 1937, No. 10, will be exercised in the zones indicated below exclusively by the vessels of war of the countries mentioned at the same time:

A. In the zone comprising the northern coast of Spain from the Franco-Spanish frontier to Cape Busto, the control in question will be exercised by British vessels of war;

B. In the zone comprising the northwest coast of Spain from Cape Busto as far as the Portuguese-Spanish frontier, the control in question will be exercised by French vessels of war;

C. In the zone comprising the south coast of Spain from the Portuguese-Spanish frontier to Cape de Gata, the control in question will be exercised by British vessels of war;

<sup>3</sup> *Nederlandsche Staatscourant*, No. 63, April 5, 1937.

D. In the zone comprising the southeast coast of Spain from Cape de Gata to Cape Oropesa, the control in question will be exercised by German vessels of war;

E. In the zone comprising the eastern coast of Spain from Cape Oropesa to the Franco-Spanish frontier, the control in question will be exercised by Italian vessels of war;

F. In the zone comprising Spanish Morocco, the control in question will be exercised by French vessels of war;

G. In the zone comprising the Islands of Iviza and Majorca, the control in question will be exercised by French vessels of war;

H. In the zone comprising the Island of Minorca, the control in question will be exercised by Italian vessels of war.

II. The control provided above by the vessels of war will be exercised only to a distance of 10 marine miles from any point on the Spanish coast.

III. The vessels of war exercising the control provided for above will fly a pennant composed of two yellow parts and two blue parts in such a way that along the hoist the upper part is blue, the lower part yellow, at the point the upper part is yellow and the part above it blue.

The hoist and the fly of the pennant are in the relation of two to three. The longer horizontal of the parts next to the hoist is one-half that of the parts in the point.

#### ART. 3

This Decree will enter into force so far as concerns The Netherlands, the Netherlands Indies, Surinam and Curaçao at a date to be designated later by Us after the publication in the respective territory.

Our previously-recited Ministers are charged with the execution of the present Decree which will be published in the Official Journal of The Netherlands and in the respective official publications of the Netherlands Indies, of Surinam and Curaçao.

#### IV. DECREE AMENDING SANCTION MEASURES RELATING TO SPAIN, APRIL 9, 1937<sup>4</sup>

##### (Translation)

We, Wilhelmina, . . .

##### ARTICLE I

(1) In Article 1, under (a) of Our Decree of March 4, 1937 (*Staatsblad* No. 160), aiming at checking the traffic by Netherlands ships in weapons and volunteers destined for Spain, the words "the Spanish zone in Morocco" are to be read in place of "the Spanish protectorate in Morocco."

(2) In Article 6 of the above-mentioned Decree, the word "and," preceding the words "the officials of the Shipping Inspection," is to be replaced by

<sup>4</sup> *Staatsblad*, No. 162. *Nederlandsche Staatscourant*, No. 72, April 17, 1937.

a comma, and at the end, after the words "Shipping Inspection" there is to be added "and the officers of Netherlands war vessels."

## ART. 2

This decree becomes effective in The Netherlands, the Netherlands Indies, Surinam and Curaçao on the second day after that of its publication in the respective place.

Our Minister of Foreign Affairs, of Defense, of Waterways, of Commerce, Industry and Shipping and of the Colonies are charged, each within his own competence, with the execution of this Decree, which is to be placed in the *Staatsblad*, in the *Staatscourant*, and in the corresponding publications in the Netherlands Indies, Surinam and Curaçao, and a copy of which is to be sent to the Council of State.

V. LAW INVESTING THE CROWN WITH POWER TO TAKE MEASURES IN CONNECTION WITH THE HOSTILITIES IN SPAIN, APRIL 8, 1937<sup>5</sup>

(Translation)

We, Wilhelmina, . . .

## ARTICLE I

In connection with the international coöperative effort in the interests of peace, We reserve to Ourselves [the power] to take by general legal means all the measures which, in view of the hostilities in Spain, are demanded by the occasion.

## ART. 2

1. Dispensation from the stipulations of a decree such as is envisaged by Article 1 may be granted in the instances and by the authorities designated by Us. Failing other stipulation, Our Minister of Foreign Affairs may accord such dispensation.

2. The dispensation may be accorded either by general prescription for all cases in which the given circumstances prevail, or in special circumstances upon a request *ad hoc*. To the dispensation conditions may be attached, as well as the requirement that surety for the fulfilment of these conditions be given.

## ART. 3

1. Violation of the prohibitions promulgated by virtue of Article 1 or of other measures adopted [to the same end], as well as failure to live up to the conditions stipulated in Article 2, paragraph 2, are to be punished by imprisonment of at most one year, or by a fine of at most ten dozen florins.

2. Firearms by means of which or with regard to which the act is accomplished may be declared confiscated.

<sup>5</sup> *Staatsblad* No. 120. Supplied by the Government of the Netherlands.

3. If the guilty party commits one of the acts made punishable by this law in the course of his profession, he may be deprived of the right to practice that profession.

4. The acts are to be considered misdemeanors [*misdrifven*].

5. The penal provisions are applicable to every one who is guilty of the proscribed act within the Kingdom, or without the Kingdom on board a Netherlands vessel, as well as Netherlands subjects outside the Kingdom.

#### ART. 4

This law is likewise applicable to the Netherlands Indies, Surinam and Curaçao.

#### ART. 5

1. In addition to the persons indicated in Article 141 of the Code of Criminal Procedure, and by virtue of Article 50 of the law of May 23, 1899 (*Staatsblad* No. 128), the following are charged with the seeking out of the punishable acts referred to in Article 3 :

(a) officials of the Rijks police and of the local police;

(b) customs and excise officials;

(c) all the other persons indicated by the general stipulations of law.

2. In the Netherlands Indies, Surinam and Curaçao, in addition to those who are in general charged there with the seeking out of punishable acts, there are charged with the seeking out of these punishable acts also the officials of the respective departments of taxation, and, moreover, those who are or may be assigned by the Governor-General or the Governor of the place in question.

#### ART. 6

1. Our decrees issued by virtue of Article 1, and the decrees for the revocation thereof are to be published in the *Nederlandsche Staatscourant* and in the corresponding publications of the Netherlands Indies, Surinam and Curaçao.

2. The stipulations formulated in a decree are to become effective in each part of the realm as of the day following that of their publication there, unless a later date is indicated in the decree.

3. The stipulations of the 2d paragraph of this Article are applicable *mutatis mutandis* to the revocation of these stipulations.

#### ART. 7

Save for punishable acts which shall have been already performed, the stipulation of this law become inoperative at such time as We shall declare that the circumstances which have given rise to this law no longer exist.

#### ART. 8

This law is to become effective as of the day following that of its promulgation.



We order and command that this law be placed in the *Staatsblad*, and that all Ministerial Departments, Authorities, Colleges and Officials to whom it is pertinent apply themselves to its accurate execution.

VI. DECREE NO. 54, OF APRIL 16, 1937, RELATING TO THE ENTRY INTO FORCE OF THE DECREE OF MARCH 30, 1937<sup>6</sup>

(Translation)

We, Wilhelmina, . . .

ARTICLE I

1. The decree of March 30, 1937, No. 10 (*Staatsblad* No. 161), serving to give rules in regard to the international surveillance with reference to touching at Spanish ports by Netherlands vessels, becomes effective on the day this decree becomes effective at twenty-four o'clock.

2. The decree of March 30, 1937, No. 92, serving to give instructions for the execution of the provisions of Articles 7 and 8 of the decree referred to in the first paragraph, becomes effective on the day this decree becomes effective at twenty-four o'clock.

ART. 2

1. The decrees referred to in Article 1 are not applicable to the captain of a Netherlands vessel which, at the time they became effective, was en route to a port in Spain and had already passed the last port of call.

2. "The last port of call" as used in the foregoing paragraph means the last port of call that the captain of a Netherlands vessel en route to a port in Spain is obliged to put into in accordance with the provisions of Article 7 of the decree of March 30, 1937 (*Staatsblad* No. 161) and with the provisions of Article 1 of the decree of March 30, 1937, in execution of the above-mentioned Article 7.

3. The decrees referred to in Article 1 are likewise not applicable to the captain of a Netherlands vessel that has no radio receiving equipment on board, and which at the time they became effective is already at sea bound direct to a port in Spain.

ART. 3

This decree becomes effective for The Netherlands, the Netherlands Indies, Surinam and Curaçao on the day of its proclamation in the respective places.

Our Ministers above-mentioned are charged with the execution of this decree, which is to be published in the *Nederlandsche Staatscourant* and in the corresponding publications of the Netherlands Indies, Surinam and Curaçao.

<sup>6</sup> *Nederlandsche Staatscourant*, No. 73, April 19, 1937.

VII. DECREE NO. 53, REGARDING CONTROL OF VESSELS BOUND FOR SPAIN,  
APRIL 24, 1937<sup>7</sup>

(Translation)

We, Wilhelmina, . . .

## ARTICLE I

The captain of a Netherlands vessel who on his voyage touches at no other port in Spain than one in Ifni, Rio de Oro, Rio Muni or Fernando Po, is freed from the stipulations of the Decree of March 30, 1937 (*Staatsblad* No. 161) and from the Decree of March 30, 1937, No. 92, published in the *Nederlandsche Staatscourant* of April 5, 1937.

## ART. 2

Article 2 of the Decree of April 16, 1937, published in the *Nederlandsche Staatscourant* of April 19, 1937, is amended to read as follows:

"(a) The decrees referred to in Article 1 are not applicable to the captain of a Netherlands vessel who at the point of time of their becoming effective has already passed by the port that he would have had to touch at with his vessel en route to a port in Spain if the Decrees in question had been effective at the time that he passed the port.

(b) The Decrees referred to in Article 1 are likewise not applicable to the captain of a Netherlands vessel that at the point of time of their becoming effective is already at sea bound directly for a port in Spain and at the time in question has no radio equipment on board."

## ART. 3

1. In fulfilment of the stipulations of Article 9, first paragraph of the Decree of March 30, 1937 (*Staatsblad* No. 161) the captain of a Netherlands vessel en route to a port in Spain must fly a white triangular burgee 229 cm. along the hoist, and measuring from the point to the hoist 289 cm. long, with two black balls 69 cm. in diameter placed horizontally next to each other.

2. The burgee referred to in the preceding paragraph is to be procured by the captain of such Netherlands vessels through the "International Board for Non-Intervention in Spain."

## ART. 4

After Article 2 of the Decree of March 30, 1937, No. 92, published in the *Nederlandsche Staatscourant* of April 5, 1937, the following article 2 (a) is to be inserted:

"2 (a). 1. The captain of a Netherlands vessel en route to a port in Spain lying in the zone comprised by the south coast of Spain from Cape de Gata to

<sup>7</sup> *Nederlandsche Staatscourant*, No. 79, April 27, 1937.

Cape Oropesa is obliged to set such a course on his way from the port of call required for the taking on board of the international controllers to his port of destination in Spain that he touches one of the three following points, in order to submit to the necessary search by the German war vessels charged with the international control of the sea, unless this search has already been made by a vessel of German or other nationality charged with such control.

2. The points referred to in the preceding paragraph are:

(a) Cartagena control point: 10 marine miles south of Escombrera Island light.

(b) Alicante control point: 10 marine miles east of the intermittent group light on the southern point of the Breakwater.

(c) Valencia control point: 10 marine miles east of the flashing group light on the end of the Northern Dike.

3. If the captain of a Netherlands vessel does not proceed to one of the above-mentioned three points, yet passes within a distance of one and a half marine miles of one of them, he is not to be deemed to have failed to fulfil the duty prescribed in the first paragraph."

#### ART. 5

This Decree becomes effective in The Netherlands, the Netherlands Indies, Surinam and Curaçao on the day of its publication in the place in question.

Our Ministers above mentioned are charged with the execution of this Decree which is to be published in the *Nederlandsche Staatscourant* and in the corresponding publications of the Netherlands Indies, Surinam and Curaçao.

#### VIII. DECREE NO. 10, OF JUNE 17, 1937, MODIFYING DECREE OF MARCH 30, 1937<sup>8</sup>

(Translation)

We, Wilhelmina, . . .

#### ARTICLE I

Article 1 sub (c) of the Royal Decree of March 30, 1937, No. 92, published in the *Staatscourant* of April 5, 1937, No. 63, is amended to read as follows:

"(c) if the captain with his vessel (which vessel does not come under the stipulations in '6') is betaking himself to a port in Spain from a Channel port lying south of Dover, he is obliged to run in to Dover or Brest at his own choice, unless his vessel is making its way to a port in Spain from a port lying between Cherbourg and Brest, for which case directions are given here under (d)."

<sup>8</sup> *Nederlandsche Staatscourant*, No. 114, June 17, 1937.

## ART. 2

This decree becomes effective for The Netherlands, the Netherlands Indies, Surinam and Curaçao on the day following that of its publication in the place in question.

Our Ministers above-mentioned are charged with the execution of this decree, which is to be published in the *Nederlandsche Staatscourant* and in the corresponding publications of the Netherlands Indies, Surinam and Curaçao.

IX. DECREE No. 53, OF SEPTEMBER 27, 1937, MODIFYING DECREES OF MARCH 30 AND JUNE 17, 1937<sup>9</sup>

(Translation)

We, Wilhelmina, . . .

## ARTICLE I

Article 1 of the decree of March 30, 1937, published in the *Nederlandsche Staatscourant* of April 5, 1937, and amended by the decree of June 17, 1937, published in the *Nederlandsche Staatscourant* of June 17, 1937, is amended to read as follows:

"The captain of a Netherlands ship in calling at one of the ports designated in Article 7 of the decree of March 30, 1937, *Staatsblad* No. 161, is bound to observe the following regulations:

(a) If the captain with his vessel sails through the Straits of Gibraltar, irrespective of direction, previous to touching at a port in Spain, he is required to call at Gibraltar. This rule supersedes all the following regulations, so that the regulations following here below are applicable only to the captain of a Netherlands vessel who is not subject to the above mentioned rule;

(b) If the captain with his vessel (which vessel does not fall under the stipulations of (n) or (o)) on his way to a port in Spain passes through the Channel from a port lying north of Dover, he is bound to call at Dover;

(c) If the captain with his vessel (which vessel does not fall under the stipulations of (b), (n), (o), or (p)) sets out for a port in Spain from a Channel port lying south of Dover, he is bound to call at Dover or Falmouth;

(d) If the captain with his vessel (which vessel does not fall under (n) or (o)) sets forth from the Irish Free State or from Northern Ireland, or from the Irish or Bristol Channels for a port in Spain, he is bound to call at Falmouth;

(e) If the captain with his vessel (which vessel does not fall under the stipulations in (b)) sets forth for a port in Spain from a French port lying on the Atlantic Ocean or on the Gulf of Biscay south of Brest, he is bound to call at Le Verdon;

<sup>9</sup> *Nederlandsche Staatscourant*, No. 188, Sept. 30, 1937.

(*f*) If the captain betakes himself with his ship from a point in the Mediterranean Sea or from a Mediterranean port east of longitude 12 degrees East to a port in Spain, he must touch at Palermo, unless in the course of his commercial dealings he is going to call first at Marseilles anyhow, in which case it shall be permitted to take on board the international controllers in the last-mentioned port;

(*g*) If the captain with his vessel (which vessel does not fall under the stipulations of (*f*)) sets out for a port in Spain from a North African port lying west of longitude 12 degrees East, he is bound to call at Oran;

(*h*) If the captain with his vessel (which vessel does not fall under the stipulations of (*f*)) sets out for a port in Spain from a port lying on the French or Italian coasts between Marseilles and longitude 12 degrees East, or from Corsica or Sardinia, he is bound to call at Marseilles;

(*i*) If the captain with his vessel (which vessel does not fall under the stipulations of (*f*)) sets out for a port in Spain from a French port situated on the Mediterranean Sea west of Marseilles, he is bound to call at Cette;

(*k*) If the captain with his vessel approaches from west of longitude 15 degrees West or, on the Atlantic Ocean, from south of latitude 28 degrees North, he is obliged to call at one of the following ports, to wit: Madeira, Gibraltar or Lisbon;

(*l*) If the captain with his vessel comes from a Moroccan port lying on the Atlantic Ocean, he is obliged to call at Gibraltar, or, in case the ship is bound for a Spanish port north of Portugal, at Lisbon;

(*m*) If the captain with his vessel comes from a Portuguese port, he is obliged to call at Lisbon;

(*n*) If the captain with his vessel is sailing

1. through the Channel from a port lying north of Dover,
2. from a Channel port lying south of Dover,
3. from the Irish Free State, Northern Ireland, the west coast of Scotland, or from the Irish or Bristol Channels,
4. from a port lying between Cherbourg and Brest

but, before making a port in Spain, calls at a port in Portugal, he is obliged to call at Lisbon;

(*o*) If the captain with his vessel is sailing

1. through the Channel from a port lying north of Dover,
2. from a Channel port lying south of Dover,
3. from the Irish Free State, from Northern Ireland, from the west coast of Scotland, or from the Irish or the Bristol Channels,
4. from a port lying between Cherbourg and Brest

and before making a port in Spain, makes a port in France, he is obliged to call at Dover, Falmouth, or Le Verdon;

(*p*) If the captain with his vessel (which vessel does not fall under (*n*) or (*o*)) sets out for a port in Spain from a port between Cherbourg and Brest, he is obliged to call at Falmouth or Le Verdon."

## ART. 2

1. This decree becomes effective for the Rijk in Europe on October 1, 1937, with the exception of the stipulations in (c), (d), (o) and (p) of Article 1, which become effective on October 15, 1937.

2. This decree becomes effective in the Netherlands Indies, Surinam and Curaçao on the day following that of its proclamation in the respective places.

Our Ministers above-mentioned are charged with the execution of this decree, which is to be published in the *Nederlandsche Staatscourant* and in the corresponding publications of the Netherlands Indies, Surinam and Curaçao.

## 20

## NORWAY

## I. LAW ESTABLISHING RULES PROHIBITING PARTICIPATION IN WAR IN FOREIGN COUNTRIES, MARCH 19, 1937

(See Appendix V—Norway)

## II. RULES TO PROHIBIT PARTICIPATION IN THE CIVIL WAR IN SPAIN, MARCH 19, 1937

(See Appendix V—Norway)

III. LAW AUTHORIZING THE KING OR HIS APPOINTEE TO PROHIBIT NORWEGIAN SHIPS BEING USED TO TRANSPORT ABROAD PERSONS WHO INTEND TO TAKE PART IN WAR, ARMS, IMPLEMENTS, AVIATION EQUIPMENT OR PARTS THEREOF, APRIL 16, 1937<sup>1</sup>

(Translation)

We Haakon, King of Norway, . . .

Announce herewith that there has been laid before Us the decision of the Storting of April 15, 1937, as follows:

1. The King, or such person as he has given the authority, may prohibit Norwegian vessels being used to transport abroad persons who intend to take part in war, arms, implements, aviation equipment or parts thereof, and may establish rules to enforce this prohibition, and under this power rules concerning rights and obligations invalidating freight contracts if the charterer has used a ship in such a way that it has acted contrary to this prohibition.

2. Violations of this prohibition or of the rules that are issued in connection with paragraph 1, will be punished with a fine or with imprisonment up to three months.

3. This law shall go into force at once.

<sup>1</sup> *Norsk Lovtidende*, No. 14, April 19, 1937, pp. 368-369.

IV. ROYAL RESOLUTION, APRIL 16, 1937<sup>2</sup>*(Translation)*

The Ministry of Foreign Affairs can prohibit Norwegian ships to transport persons who intend to take part in war, arms, ammunition, aviation equipment or parts thereof to Spain or territories under Spanish rule, and issue the necessary regulations to enforce the prohibition, and under this power rules concerning rights and obligations invalidating freight contracts if the charterer is using or has used a ship in such a way that it is contrary to the prohibition.

V. ANNOUNCEMENT OF THE MINISTRY OF FOREIGN AFFAIRS IN CONNECTION WITH THE ROYAL RESOLUTION OF APRIL 16, 1937<sup>3</sup>*(Translation)*

The Ministry of Foreign Affairs stipulates that it is forbidden for Norwegian ships to transport persons who intend to partake in war, arms, implements, aviation equipment or parts thereof, to Spain or territory that belongs to Spain.

This shall go into force at once.

VI. RULES CONCERNING INTERNATIONAL CONTROL OF SHIPPING TO SPAIN, MAY 3, 1937<sup>4</sup>*(Translation)*

Referring to the Royal Resolution of April 16, 1937, the Department of Foreign Affairs has decreed May 3, 1937, that from midnight May 9, 1937, all Norwegian ships proceeding to ports in that part of the Spanish south-east coast that lies between Cape de Gata and Cape Oropesa, shall act in accordance with the following directions submitted by the Committee of Experts of the London Non-Intervention Committee referring to the international maritime naval-military control in the area mentioned.

It was agreed by the Non-Intervention Committee in London on March 8th of this year, that the international naval control established for Spain should be exercised by Britain, France, Italy, and Germany in certain fixed zones.

In the same agreement it was agreed that to simplify the naval control those Powers that have such control—after the Non-Intervention Committee's consent—may establish in the vicinity of the zones or all the zones, focal areas through which all ships will be required to pass which have a right to carry a flag belonging to a country participating in the Non-Intervention Agreement and which proceed to ports inside these zones.

<sup>2</sup> *Ibid.*, p. 369.

<sup>3</sup> *Norsk Lovtidende*, No. 15, April 28, 1937, p. 371.

<sup>4</sup> *Norsk Lovtidende*, No. 17, 1937, pp. 462-464.

The control zone allocated to Germany is along the southeast coast of Spain from Cape de Gata to Cape Oropesa.

Upon the proposal of Germany, the Technical Committee established by the Non-Intervention Committee, has proposed the following:

1. The German Government shall establish as a focal area for the German control zone upon the Spanish coast (Cape de Gata to Cape Oropesa), the following three focal points:

(a) Cartagena focal point, 180 degrees, 10 marine miles from Escombrera Island Light.

(b) Alicante focal area, 090 degrees, 10 marine miles from the Group Occulting Light at the south end of the Breakwater.

(c) Valencia focal area, 090 degrees, 10 marine miles from the Group Flashing Light at the end of the Northern Dike.

2. All ships which have a right to carry the flag belonging to countries whose Government takes part in the Agreement of the Non-Intervention Committee and which are en route to a port inside the zone assigned to Germany must, when proceeding from a control port to the port which the ship is destined for in Spain, be instructed to pass through one of the three above-mentioned focal areas where the required control will be exercised by German warships, excepting where the control has already been exercised by German or other warships that patrol the Spanish coast.

3. If the ship does not pass through one of the focal areas but passes inside a radius of one and a half marine miles therefrom, it will not by this [act] be looked upon as not having conformed with the prescribed procedure.

It is recommended for ships:

(a) When they proceed along the Spanish coast and inside ten miles therefrom to choose either the most northern or the most southern focal area however the circumstances indicate.

(b) When they are coming in from the open sea (from a greater distance than ten marine miles) into the coast, to choose the focal area that is nearest their route to the port of destination.

#### VII. CIRCULAR OF THE MINISTRY OF FOREIGN AFFAIRS TO NORWEGIAN FOREIGN SERVICE REPRESENTATIVES REGARDING THE INTERNATIONAL CONTROL OF VESSELS PROCEEDING TO SPANISH PORTS, APRIL 19, 1937<sup>5</sup>

I have the honour to inform you that in virtue of a Royal Decree of the 16th of April, 1937, the Ministry of Foreign Affairs has made the following decision, dated the 19th of April, 1937:

##### I

All ships having the right to fly the Norwegian flag (other than naval vessels), proceeding to Spain or to one of the Spanish possessions or to the

<sup>5</sup> English translation supplied by the Government of Norway in Circular No. 26, dated May 8, 1937. Text in *Norsk Lovtidende, 2nen avdeling*, 1937, p. 140 et seq.



Spanish zone in Morocco, will embark at one of the ports specified below, "Observing Officers" in accordance with the international agreement regarding non-intervention in Spain, in order to supervise the ship's cargo and the persons on board.

[Here follows the schedule of Observation Ports identical with that contained in the Resolution of the Non-Intervention Committee, paragraph 12. See Appendix VI.]

If no Observing Officers are available within 4 hours after the master or the agent of the ship shall have reported its arrival to the Administrator or Deputy Administrator in charge of the port, the master of the ship is entitled to obtain from the Administrator or Deputy Administrator a Document certifying that he called at the port and that no Observing Officers were available to be embarked on his ship.

As a general rule two or more Observing Officers shall be embarked on ships bound for Spain. Small ships, ships carrying cargo in bulk, or ships in ballast can, at the Discretion of the Administrator or Deputy Administrator in charge of the observation port in question, embark one Observing Officer only.

In particular cases, the Administrator or Deputy Administrator in charge of one of the following ports, The Downs (or Dover), Cherbourg, Lisbon, Gibraltar, Marseilles, Palermo or Madeira, will have the right to make special arrangements for the embarkation of Observing Officers at other ports than those mentioned above.

Ship-owners engaged in regular trade with Spanish ports will be permitted, should they so desire, to embark Observing Officers to be stationed continually on board their vessels, but such Observing Officers should be changed as often as reasonably convenient. The additional expenditure involved will be defrayed by the ship-owner concerned. If Observing Officers are being sent from one of the observation ports to embark on board a ship, the expenditure involved will likewise be defrayed by the owner of the ship.

2

It is the duty of masters of ships to render the Observing Officers all assistance necessary for the carrying out of their duties. The duties of the Observing Officers, when on board ships in Spanish ports, are to take such measures as they may consider necessary in order to satisfy themselves:

1. whether any arms or war material of the classes covered by the Non-Intervention Agreement are being unloaded, and
2. whether, in contravention of the Non-Intervention Agreement, any foreign nationals intending to take service in the present conflict are being disembarked,
3. on leaving any Spanish port that no passenger or member of the crew, who may have left the ship while in port, has failed to return.

In this connection it is the duty of the master of the ship:

1. at any convenient time during the voyage to give the Observing Officer all necessary information as to the cargo carried which is consigned to Spanish ports, and to allow him to inspect papers relating thereto,

2. at any convenient time during the voyage to give the Observing Officer all necessary information, and, in his presence, or in that of an officer nominated by him for the purpose, to interrogate passengers, officers and crew, proceeding to Spanish ports and to examine the passports of passengers and the identity papers of the officers and crew,

3. to allow the Observing Officer to be present at the unloading of any goods or disembarkation of any person in a Spanish port, and to have opened for inspection any package which is being unloaded and which the Observing Officer has reasonable grounds for suspecting to contain war material sent in contravention of the Non-Intervention Agreement, and to have any necessary unpacking, repacking and sealing-up done at the demand of the Observing Officer,

4. to give the Observing Officer the same priority right of the use of telephone and telegraph on board as he has himself.

The owner and master of the ship are to take all steps necessary to prevent the landing in a Spanish port, in contravention of the Non-Intervention Agreement, of any arms or war material or passengers which or whom the Observing Officer may ascertain are being carried by the ship in question.

The Observing Officers are entitled to be accommodated as first class passengers in passenger ships, and in other ships as mates.

The Observing Officers are entitled to the same messing as officers in passenger ships and as masters in the other ships. Observing Officers will otherwise be carried on the same conditions as passengers with regard to liability for life and property.

After departure from a Spanish port, the Observing Officers shall be landed in a port, according to agreement, and where it may be convenient, either in one of the observation ports nearest to the route of the ship or at another port, which does not entail more than a 50 sea miles deviation.

### 3

A Master of a Norwegian ship proceeding to Spain, Spanish possessions or to the Spanish zone in Morocco shall, when he is within a distance of 10 sea miles from the coast of the said territories, allow commanding officers of naval vessels, belonging to France, Italy, Great Britain or Germany to identify the ship, and ascertain that the ship has called at an observation port, and has embarked Observing Officers, or that the master of the ship has obtained from the Administrator or the Deputy Administrator of the observation port in question a document certifying that he has called at the said observation port without having found an Observing Officer available. When a naval vessel hails a ship within a distance of 10 sea miles from the coast, it is the duty of the master of the said ship to take such measures as are convenient to facilitate the observation, and if required, the embarkation

of persons from the naval vessel who are in charge of the supervision, and who will have the right to examine the papers of the ship.

## 4

A Norwegian ship will, when proceeding to Spanish ports, after having embarked Observing Officers at one of the observation ports, or having in lieu thereof been granted a certificate to the effect that the ship has called at the observation port in question, without having found an Observing Officer available, fly in addition to the Norwegian flag a specially agreed pennant, to indicate that she has complied with the procedure laid down.

It is the strict duty of the master of the ship to take care that the pennant shall not be flown when there is no Observing Officer on board or when he is not in possession of the certificate in question.

## 5

These provisions shall not for the time being apply to ports in the Canary Islands, Ifni, Rio de Oro, Rio Muni and Fernando Po.

These provisions shall come into operation on April 20th, 1937.

VIII. ANNOUNCEMENT OF THE MINISTRY OF FOREIGN AFFAIRS, OCTOBER 27, 1937<sup>6</sup>

(Translation)

Referring to the Royal Resolution of April 16, 1937, the Ministry of Foreign Affairs Decrees the following:

In the rules issued by the Department of Foreign Affairs, April 19, 1937, referring to the control of shipping to Spain, the Points (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l) and (m) of paragraph 1, from now on will read as below, and after point (m), the following points (n), (o) and (p) will be added:

(a) If the ship is passing through the Straits of Gibraltar before calling at any Spanish port she will take aboard control officers in Gibraltar, it being understood that this rule overrides all the following rules which therefore only apply to ships that do not come within its area.

(b) If the ship (if it is not a ship included in (n) and (o) below) is passing through the English Channel on its way to a Spanish port from a port lying to the north of Dover, it will take aboard control officers at Dover.

(c) If the ship (if it is not a ship covered by (b) above, or by (n) or (o) or (p) below) shall proceed to a Spanish port from a Channel port south of Dover, it shall take aboard control officers either at Dover or Falmouth, whichever it passes.

(d) If the ship (if it is not a ship covered by (n) or (o) below) proceeds from the Irish Free State or from North Ireland, or from the west

<sup>6</sup> *Norsk Lovtidende*, No. 40, 1937, pp. 1158-1160.

coast of Scotland, or from the Irish Channel, or the Bristol Channel, it shall take aboard control officers at Falmouth.

(*e*) If the ship (if it is not a ship covered by (*b*)) proceeds to a Spanish port from a French Atlantic or Biscayan port south of Brest, it shall take aboard control officers at Le Verdon.

(*f*) If the ship is approaching westward through the Mediterranean from a port in the Mediterranean, east of longitude 12 degrees East, it shall take aboard control officers at Palermo, unless for commercial reasons it is proceeding to Marseilles in which case it will be permitted to take aboard control officers in that port.

(*g*) If the ship (if it is not a ship that is covered by (*f*) above) proceeds to a Spanish port from a North African port west of longitude 12 degrees East, it shall take aboard control officers at Oran.

(*h*) If the ship (if it is not a ship that is covered by (*f*) above) proceeds to a Spanish port from a port on the French or Italian coast between Marseilles and longitude 12 degrees East, or from Corsica or Sardinia, it shall take aboard control officers at Marseilles.

(*i*) If the ship (if it is not a ship that is covered by (*f*) above) proceeds to a Spanish port from a French Mediterranean port west of Marseilles, it shall take aboard control officers at Site [Cette].

(*k*) If the ship is approaching from the west of longitude 15 degrees West, or is approaching in the Atlantic from southward of latitude 28 degrees North, it shall take aboard control officers in one of the following ports: Madeira, Gibraltar, or Lisbon.

(*l*) If the ship is coming from a port on the Atlantic seaboard of Morocco, it shall take aboard control officers in Gibraltar, or in case of ships proceeding to Spanish ports north of Portugal, at Lisbon.

(*m*) If the ship is coming from a Portuguese port, it shall take aboard control officers at Lisbon.

(*n*) If the ship is proceeding to a Spanish port: (1) through the English Channel from a port north of Dover, or (2) from a Channel port south of Dover, or (3) from the Irish Free State or from North Ireland, or from the west coast of Scotland, or from the Irish Channel, or from the Bristol Channel, or (4) from a port between Cherbourg and Brest, but before it proceeds to a Spanish port it calls at a Portuguese port, it shall take aboard control officers at Lisbon.

(*o*) If the ship proceeds: (1) through the English Channel from a port north of Dover, or (2) from a Channel port south of Dover, or (3) from the Irish Free State or from North Ireland, or from the west coast of Scotland, or from the Irish Channel, or from the Bristol Channel, or (4) from a port between Cherbourg and Brest, and before it goes to a Spanish port it calls at a French port, it shall take aboard control officers either at Dover or at Falmouth or at Le Verdon, whichever is convenient.

(*p*) If the ship (if it is not a ship covered by (*n*) or (*o*) above) proceeds from a port between Cherbourg and Brest, it shall take aboard

control officers either at Falmouth or at Le Verdon, whichever is convenient.

IX. CIRCULAR OF THE MINISTRY OF FOREIGN AFFAIRS, MARCH 18, 1938,  
RELATING TO THE OBSERVATION OF SHIPS <sup>7</sup>

Referring to Circular No. 26 of May 8, 1937, I have the honour to inform you that in virtue of Royal decree of April 16, 1937, the Ministry of Foreign Affairs has made the following decision, dated October 27, 1937:

In the regulations relating to the control of vessels proceeding to Spanish ports issued by the Ministry of Foreign Affairs on April 19, 1937, the sub-sections (*a*), (*b*), (*c*), (*d*), (*e*), (*f*), (*g*), (*h*), (*i*), (*k*), (*l*) and (*m*) of section 1 should henceforward read as follows, while after (*m*) should be added sub-sections (*n*), (*o*) and (*p*) as quoted below:

(*a*) If the ship is passing in either direction through the Straits of Gibraltar before calling at any Spanish port she will embark her observing officers at Gibraltar, it being understood that this rule overrides all the following rules, which therefore only apply to vessels which do not come within its scope;

(*b*) If the ship (not being a ship covered by (*n*) or (*o*) below) is passing through the English Channel on her way to a Spanish port from a port lying to the north of Dover, she will embark her observing officers at Dover;

(*c*) If the ship (not being a ship covered by (*b*) above or (*n*) or (*o*) or (*p*) below) proceeds to a Spanish port from a Channel port south of Dover, she will embark her observing officers either at Dover or Falmouth, whichever she prefers;

(*d*) If the ship (not being a ship covered by (*n*) or (*o*) below) is proceeding from the Irish Free State or from Northern Ireland or from the west coast of Scotland or from the Irish and Bristol Channels, she will embark her observing officers at Falmouth;

(*e*) If the ship (not being a ship covered by (*b*) above) proceeds to a Spanish port from a French Atlantic or Biscayan port south of Brest, she will embark her observing officers at Le Verdon;

(*f*) If the ship is proceeding westward through the Mediterranean or from a port in the Mediterranean, east of Longitude 12° East, she shall embark her observing officers at Palermo, unless for commercial reasons she is in any case proceeding to Marseilles, in which case it will be permitted to embark observing officers at that port;

(*g*) If the ship (not being a ship covered by (*f*) above) proceeds to a Spanish port from a North African port west of Longitude 12° East, she will embark her observing officers at Oran;

(*h*) If the ship (not being a ship covered by (*f*) above) proceeds to a Spanish port from a port on the French or Italian coast between Mar-

<sup>7</sup> English translation supplied by the Government of Norway.

seilles and Longitude  $12^{\circ}$  East, or from Corsica or Sardinia, she will embark her observing officers at Marseilles;

(*i*) If the ship (not being a ship covered by (*f*) above) proceeds to a Spanish port from a French Mediterranean port west of Marseilles, she will embark her observing officers at Cette;

(*k*) If the ship is approaching from the west of Longitude  $15^{\circ}$  West, or is approaching in the Atlantic from south of Latitude  $28^{\circ}$  North, she will embark her observing officers at one of the following ports, viz., Madeira, or Gibraltar, or Lisbon;

(*l*) If the ship is coming from a port on the Atlantic seaboard of Morocco, she will embark her observing officers at Gibraltar, or, in the case of ships proceeding to Spanish ports north of Portugal, at Lisbon;

(*m*) If the ship is coming from a Portuguese port, she will embark her observing officers at Lisbon;

(*n*) If the ship proceeds:

i. through the English Channel from a port lying to the north of Dover, or,

ii. from a Channel port south of Dover, or

iii. from the Irish Free State or from Northern Ireland or from the west coast of Scotland or from the Irish or Bristol Channels, or

iv. from a port between Cherbourg and Brest,

but before calling at a Spanish port calls at a Portuguese port, she will embark her observing officers at Lisbon;

(*o*) If the ship proceeds:

i. through the English Channel from a port lying to the north of Dover, or,

ii. from a Channel port south of Dover, or

iii. from the Irish Free State or from Northern Ireland or from the west coast of Scotland or from the Irish or Bristol Channels, or

iv. from a port between Cherbourg and Brest,

and, before proceeding to a Spanish port, calls at a French port, she may embark her observing officers either at Dover or at Falmouth or at Le Verdon, whichever she prefers.

(*p*) If the ship (not being a ship dealt with under either (*n*) or (*o*) above) proceeds from a port between Cherbourg and Brest, she will embark her observing officers either at Falmouth or Le Verdon, whichever she prefers.

The above-mentioned decision came into effect on October 27, 1937.

## POLAND

I. DECREE OF THE MINISTER FOR FOREIGN AFFAIRS, MAY 22, 1937<sup>1</sup>

Further to the Decree of the Minister for Foreign Affairs of December 10th, 1936, in the matter concerning the export of war material on Polish commercial vessels and Polish aircraft to Spain (*Monitor Polski* No. 288/512)\* and further to the Resolution of the International Committee for Non-Intervention in Spain adopted at the meeting of that Committee on March 8th, 1937, in London, notice is hereby given that ship owners and captains of commercial vessels sailing under the Polish flag (Polish commercial pennant) should comply with the following regulations:

1. Commercial vessels sailing under the Polish flag (Polish commercial pennant) proceeding to Spain, to Spanish possessions or to Spanish Morocco, should embark at one of the Observation Ports specified in paragraph 2 below one or more Observing Officers appointed by the International Committee for Non-Intervention in Spain who are nominated by the Administrator or his Deputy assigned by the above-mentioned Committee to that port to organise a system of Observation.

2. The taking of an Observing Officer on board by a commercial vessel should take place as follows:

(a) At Gibraltar if the ship is passing in either direction through the Straits of Gibraltar sailing to a Spanish port. This rule overrides all the following rules.

(b) Either at Dover or The Downs if a ship proceeding to Spain is passing through the English Channel on her way to a Spanish port from a port lying to the north of Dover.

(c) At Cherbourg if the ship (not being a ship covered by (b) above) proceeds to a Spanish port from a Channel port south of Dover, unless the ship is proceeding from a port between Cherbourg and Brest, in which case she will be dealt with under (d) below.

(d) At Brest, if the ship is proceeding to a Spanish port from Ireland or from the Irish and Bristol Channels, or from a port between Cherbourg and Brest.

(e) At Le Verdon, if the ship (not being a ship covered by (b) above) proceeds to a Spanish port from a French Atlantic or Biscayan port south of Brest.

(f) At Palermo, if the ship is proceeding to Spain and approaching westward through the Mediterranean or from a port in the Mediterranean, east of Longitude 12° East, unless for commercial reasons she is in any case proceeding to Marseilles, in which case it shall be permitted to embark Observing Officers at that port.

<sup>1</sup> English text supplied by the British Foreign Office through the courtesy of the Department of State, Washington. Polish text in *Monitor Polski*, No. 116, May 24, 1937.

\* See Appendix III—Poland.

(g) At Oran, if the ship proceeding to Spain (not being a ship covered by (f) above) proceeds to a Spanish port from one of the North African ports west of Longitude  $12^{\circ}$  East.

(h) At Marseilles, if the ship proceeding to Spain (not being a ship covered by (f) above), proceeds to a Spanish port from one of the ports on the French or Italian coast between Marseilles and Longitude  $12^{\circ}$  East, or from one of the Corsican or Sardinian ports.

(i) At Cette, if the ship proceeding to Spain (not being a ship covered by (f) above) proceeds to a Spanish port from a French Mediterranean port west of Marseilles.

(k) At Madeira, or Gibraltar or Lisbon, if the ship proceeding to Spain is approaching from the west of Longitude  $15^{\circ}$  West, *or* is approaching in the Atlantic from the southward of Latitude  $28^{\circ}$  North.

(l) At Gibraltar, if the ship is coming from a port on the Atlantic seaboard of Morocco, except if it is proceeding to a Spanish port situated north of Portugal, in which case it should call at Lisbon.

(m) At Lisbon if the ship proceeding to Spain is coming from a Portuguese port.

3. The following should be regarded as the principal Observation ports:

The Downs, or Dover	Marseilles
Cherbourg	Palermo
Lisbon	Madeira

4. The Administrators in charge of Observation Ports mentioned in paragraph 3 above have the right to make special arrangements for the embarkation of Observing Officers at other ports to suit, as far as possible, the convenience of the shipping concerned from the commercial point of view.

5. Shipowners engaged in regular trade with Spanish ports will be permitted to arrange with the International Board for Non-Intervention in Spain for one or more Observing Officers to be stationed continuously on board their vessels, the additional expenditure involved being defrayed by the shipowner concerned.

6. The Captains of the ships on board of which Observing Officers are stationed should give them all the necessary assistance in order to facilitate their activities as mentioned in paragraph 7, and also disembark them in the port mentioned by the Administrator or his Deputy in the Observation Port in accordance with the provisions set down in paragraph 13. These facilities are stipulated by the Observing Officers as follows:

(a) at any convenient time during the voyage to obtain all necessary information from the master as to the cargo carried which is consigned to Spanish ports, and to inspect papers relating thereto;

(b) at any convenient time during the voyage to obtain all necessary information from the master, and, in his presence, or in that of an officer nominated by him for the purpose, to interrogate passengers, officers and



crew, proceeding to Spanish ports and to examine the passports of passengers and the identity papers of the officers and crew;

(c) to be present at the unloading of any goods or disembarkation of any persons in a Spanish port, and to require the master to have opened for inspection any package which is being unloaded, and which the Observing Officer has reasonable grounds for suspecting to contain war material sent in contravention of the Non-Intervention Agreement, and to require the master to have any necessary unpacking, repacking and sealing-up done;

7. The Observing Officers, when on board vessels in Spanish ports, will have the right, within the limits of the facilities accorded to them under paragraph 6 above, to take all steps which they may consider necessary to satisfy themselves:

(a) whether any arms or war material of the classes covered by the Non-Intervention Agreement are being unloaded; and

(b) whether, in contravention of the Non-Intervention Agreement, any foreign nationals intending to take service in the present conflict are being disembarked;

(c) on leaving any Spanish port that no passenger or member of the crew, who may have left the ship while in port, has failed to return in contravention of the Non-Intervention Agreements.

8. Shipowners and Captains should with all their power prevent the unloading at a Spanish port in contravention of the Non-Intervention Agreement of arms and war material, and also the disembarkation of persons whose presence on board has been noted by the Observing Officers.

9. Observing Officers in the discharge of their duties will be granted the same rights in connection with telephone and telegraph services as the master of the vessel in the course of his duties. This right will not affect the priority given to signals to ensure safety at sea.

10. The owners of vessels proceeding to Spanish ports will be under an obligation to provide accommodation for the Observing Officers equivalent to that normally provided for officers such as mates or, in a passenger ship, i.e., a ship having accommodation for more than twelve passengers, for first-class passengers. In cases where there is no accommodation classed as first class, the accommodation to be provided will be of the highest class in the ship.

11. Shipowners will be placed under an obligation to provide messing similar to that provided for the masters of the ships concerned or for first-class passengers, or, in the absence of such first class, the highest class available on the ship. The expenses incurred will be refunded to the masters concerned at a standard rate or rates from the International Fund established by the Powers who are parties to the Non-Intervention Agreement.

12. The shipowners are liable for the life and property of the Observing Officers in the same way and on the same terms as for the passengers of the vessel in question.

13. The Administrator or Deputy Administrator in charge of each Observation Port will have the right to require the master of a ship which has embarked Observing Officers to disembark them at any port which would not entail an unreasonable deviation after the vessel has finally quitted Spanish waters. To this end the master of such a ship will be put under an obligation to disembark the Observing Officers (at the discretion of the Administrator or his deputy at the port of embarkation) either at the Observation Port nearest to the route that the master intends to follow after leaving Spanish waters, or at any other port which does not entail more than 50 sea miles' additional steaming.

14. No refund will be made from the International Fund referred to in paragraph 9 above in respect of delay or diversion occasioned by the necessity to embark or disembark Observing Officers, provided:

(a) that the Administrator or his deputy in charge of the Observation Port concerned embarks the Observing Officer or Officers at the earliest possible moment, and, in any case, not later than four hours after the master or agent of the ship shall have reported its arrival to the Administrator or his deputy in charge of the port; or

(b) that the provisions in (a) above will not apply in those cases where the special arrangements indicated in paragraph 4 above have been brought into operation; or

(c) that, if the Administrator or his deputy is unable to comply with (a) above, he will hand to the master of the ship a document certifying that he called at the port in order to comply with the scheme and that no Observing Officer was available.

15. The Representatives of the Governments of the countries in which the Observation Ports are situated will consult with one another with a view to reaching agreement, on behalf of their respective Governments, for the exemption, on a mutual basis, of ships calling at those ports merely for the purpose of embarking and disembarking Observing Officers, from dues and other charges (excluding pilotage) normally paid by ships entering those ports, or, if this is not possible, for the reduction of these charges to an equal extent in each of the countries concerned. In so far as such exemptions or reductions cannot be secured, the expenditure involved, together with expenditure incurred on pilotage, except in those cases in which the ship would in any case for commercial reasons have called at the port in question, will be defrayed from the International Fund.

16. In order to ensure the control, the Spanish coast will be subjected to a system of naval observation.

17. The duty of naval observation will be undertaken by the Governments of Great Britain, France, Germany and Italy.

18. For the purposes of naval observation, the Spanish coasts will be divided into zones, and the responsibility for effective observation has been entrusted to the following Powers:

- A. Great Britain—On the north coast of Spain from the French frontier to Cape Busto.
- B. France —On the northwest coast of Spain from Cape Busto to the Portuguese frontier.
- C. Great Britain—On the south coast of Spain from the Portuguese frontier to Cape De Gata.
- D. Germany —On the southeast coast of Spain from Cape De Gata to Cape Oropesa.
- E. Italy —On the east coast of Spain from Cape Oropesa to the French frontier.
- F. France —The Spanish-Moroccan coast.
- G. France —The islands of Iviza and Majorca.
- H. Italy —The island of Minorca.

In order to avoid the risk of ships escaping observation by entering Spanish territorial waters direct from the territorial waters of one of the adjacent countries, the Governments of the adjacent countries will themselves exercise observation over ships passing through these waters.

19. The duties of naval observation within each zone will only be exercised within a distance of ten sea miles from any point on the Spanish coast.

20. Commercial ships sailing under the Polish flag (the Polish commercial pennant) when they are not more than ten sea miles from the nearest point on the Spanish coast will be subject to naval observation by the naval vessels of the particular Power which has accepted responsibility for observation in the zone in question specified in paragraph 18.

21. War vessels while actually engaged in the task of naval observation will fly the pennant adopted under the North Sea Fisheries Convention signed at The Hague on May 6th, 1882, when beyond the territorial waters.

22. Commercial vessels sailing under the Polish flag (Polish commercial pennant) proceeding to a Spanish port, after having embarked Observing Officers at one of the Observation Ports, or having, in lieu thereof, been granted a certificate in the manner prescribed in paragraph 14 above, will fly the specially agreed triangular pennant with two black balls on white ground, to indicate that they have complied with the procedure laid down in the previous paragraph. This pennant should be hoisted either from one of the tops or from a yard or on any convenient line so that it may best be seen.

23. The mere fact that a ship when approaching a Spanish port is flying the specially agreed pennant referred to in paragraph 22 above will not be regarded by the vessels engaged in naval observation as affording evidence that the ship in question is in fact carrying Observing Officers, and the naval vessels concerned will take all necessary steps, as laid down in paragraph 25 below, to verify the character of the ship in question.

24. In order to simplify the work of naval observation, the Powers undertaking that observation may establish in the approaches to some or all of the zones focal areas through which all ships having the right to fly the flag

of the countries which are parties to the Non-Intervention Agreement, proceeding to ports within those zones would be required to pass.

25. The naval vessels engaged on naval observation have the following rights:

(a) To verify the identity of any commercial vessel having the right to fly the flag of any of the participating countries that may be thought to be proceeding towards any port in Spain or in the Spanish Dependencies; and for this purpose, when necessary, to order such ships to stop, to board them and to examine their certificates of registry and clearance documents, and to ascertain whether there are Observing Officers on board;

(b) to ascertain whether the ship has previously called at one of the Observation Ports enumerated in paragraph 2 above, and has taken on board Observing Officers, or has been furnished with documents in accordance with paragraph 14(c).

(c) to require all ships having the right to fly the flag of any of the countries parties to the Non-Intervention Agreement to pass through the focal area when entering the Observation Zone.

26. The naval vessels engaged in naval observation have no right of search on board a commercial vessel.

27. Vessels failing to comply with the above regulations will not be afforded the protection of the Polish Government in accordance with the preamble of the Decree of the Minister for Foreign Affairs, dated December 10th, 1936, irrespective of any ultimate responsibility which may lie on the Government in respect of general regulations.

28. Naval vessels of the Republic of Poland are not included in this Decree.

29. For the time being this Decree does not apply to commercial vessels proceeding to the Canary Islands.

30. Below will be found the addresses of the International Committee for Non-Intervention in Spain, the Chief Administrator of the Sea Observation Scheme, as well as of the Administrators of Observation Ports:

- (1) The International Council for Non-Intervention in Spain,  
Columbia House, Kingsway,  
London, W.C.2.

Telegraphic address in England: "Espanob-Estrand—London."

Cablegram and wireless address: "Espanob-London."

- (2) Chief Administrator of the Sea Observation Scheme,  
Columbia House, Kingsway,  
London, W.C.2.

Telegraphic and wireless address in England: "Espanobsea-Estrand-London."

Cablegram and wireless address: "Espanobsea-London."

- (3) The port authorities will indicate the addresses of Observation Offices in the various Observation Ports.

The telegraphic addresses are as follows:

Gibraltar: "Noninter, Gibraltar."

Madeira: "Administrator Non-Intervention, Savoy, Madeira."

Le Verdon: "Admin., Verdon."

In all other ports in which there are Administrators or their Deputies, "Espanobsea" is the telegraphic address to be used, after which the name of the port should be given, but for cablegrams the country should also be added, e.g., "Espanobsea Dover England."

## II. LAW FOR THE APPLICATION OF THE PRINCIPLE OF NON-INTERVENTION IN THE INTERNAL AFFAIRS OF SPAIN, JULY 3, 1937 <sup>2</sup>

### (Translation)

ARTICLE 1. It is forbidden merchant vessels navigating under the Polish flag and aircraft enrolled in the register of Polish aircraft to transport to Spain, Spanish possessions and the Spanish zone of Morocco, arms, munitions and implements of war as well as persons seeking to engaged in the army of one of the parties in conflict in Spain.

ART. 2. (I) The Minister of Industry and Commerce may, in accord with the Minister of Foreign Affairs, order:

(1) the limitation of the means of communication maintained between Poland and Spain, the Spanish possessions and the Spanish zone of Morocco;

(2) the obligation for merchant vessels navigating under the Polish flag to submit to the control provided in the special ordinance.\*

(II) The competent Ministers may, in accord with the Minister of Foreign Affairs, by means of ordinances, publish other prescriptions having to do with the application of the principle of non-intervention in the internal affairs of Spain.

ART. 3. (I) Anyone guilty of infraction of the provisions of Article 1 or of the provisions of the ordinances published in virtue of Article 2 of the present law will be subject to the penalty of imprisonment up to two years and fine of which the amount is not limited, or either one or both of these penalties.

(II) Jurisdiction in the case of infraction provided for by paragraph (I) of the present article belongs to the tribunals of second instance.

ART. 4. The execution of the present law falls to the Minister of Foreign Affairs and to the competent Ministers.

ART. 5. The present law enters into force the day of its publication; it shall cease to have binding force from the date which will be determined by an ordinance of the Council of Ministers.

<sup>2</sup> French text supplied by the British Foreign Office through the courtesy of the Department of State, Washington. Polish text in *Dziennik Ustaw Rzeczypospolitej polskiej*, No. 51, 1937, Poz. 390.

\* See Poland No. 1 above.

## PORTUGAL

DECREE REGULATING THE EXECUTION OF THE MEASURES AGREED UPON BY  
THE COUNTRIES SIGNATORY TO THE NON-INTERVENTION AGREEMENT  
ON THE SPANISH CIVIL WAR, APRIL 9, 1937<sup>1</sup>*(Translation)*

It becoming necessary to put into effect the measures agreed upon among the countries signatories to the Non-Intervention Agreement for the Spanish Civil War, and using the power conferred by Part II of No. 2 of Article 109 of the Constitution, the Government decrees and I promulgate, to have the validity of law, the following:

ARTICLE 1. Portuguese ships are forbidden to transport to Spain volunteers, arms or any other material of war.

ART. 2. From the date stated in the notice to be published in the "Government Daily," the captains of Portuguese ships destined to Spanish ports, before entering Spanish territorial waters, shall take aboard official observers, delegates of the International Committee of the Non-Intervention Agreement.

§ 1. For the purpose of the present law, it shall be understood:

(a) by "water adjacent to Spanish territory"—that body of water lying in the strip of the sea within ten miles from the coast;

(b) by "Spanish territory"—territory of the Spanish continent and Spanish possessions including the Spanish zone of Morocco.

§ 2. The clearance papers from the port authorities for ships destined to Spanish ports shall also be subject to the provisions of this article.

§ 3. The following shall not be considered as violating the duties prescribed by this article:

(a) Ships that enter waters adjacent to Spanish territory for the sole purpose of reaching the port where they are to take on official observers, or because of damage or bad weather or other circumstances unforeseen by the master or owner;

(b) Ships which, by agreement between the master or owner and the chief administrator of the Non-Intervention Agreement or the person in charge at the port which the ships are to touch, have changed the port where they are to embark official observers;

(c) Ships which, in a stated voyage, are exempted by the local administrator of the Non-Intervention Agreement from taking official observers on board because of shortage of the latter;

(d) Ships of small dimensions and accommodation on which the Administrator of the Non-Intervention Agreement judges the embarkation of official observers to be impractical.

§ 4. In Portuguese ports, the opinion of the local administrator in cases

<sup>1</sup> Decree no. 27:647; *Colecção de Legislação Portuguesa de 1937*, p. 90.

referred to in subdivision (*d*) shall be based on communication on the same matter approved by the port authority.

§ 5. In cases referred to in subdivisions (*c*) and (*d*) the function of observation shall be restricted to what can be exercised in the port where the official observers should have embarked.

ART. 3. The official observers shall not hinder the traffic of freight and passengers to Spain; their function is only to collect all the essential elements of information so as to enable them to report, after the voyage, whether or not the ship they inspected transported to Spain materials of war or volunteers contrary to the provisions of the Non-Intervention Agreement thus imposing responsibility on the country to which the ship belongs.

ART. 4. The official observers are entitled during the voyage as far as the port of disembarkation:

(*a*) to accommodation and messing;

(*b*) to require the display of the signals and to send telegrams by the wireless;

(*c*) to be present at the unloading of merchandise in any port or place in Spanish territory or in waters adjacent to Spanish territory;

(*d*) to obtain from the captain, at any reasonable time, the documents and information that he has relating to the cargo destined to Spanish territory carried in the ship;

(*e*) to require the captain to open any cargo for their immediate inspection before it is unloaded from the ship if they have good reasons to suspect that the contents thereof do not correspond to the description in the documents shown them, or if the description of the contents of any cargo made in such documents, compared with other perchance found in the said cargo, is insufficient to enable them to exercise the functions imposed by the Non-Intervention Agreement;

(*f*) to obtain from the master, at any reasonable time, the contract of enrollment of the crew and other documents in his possession relating to any member of the crew;

(*g*) to summon, at any reasonable time, in the presence of the master or an official authorized by the master for that purpose, any passenger to show his passport, and to summon any passenger or member of the crew to declare whether or not he intends to disembark in a Spanish port or place, and if so, the reasons for such disembarkation.

ART. 5. On leaving the last port or place of Spanish territory the master shall proceed to the port where the official observers are to disembark, unless there is a decision to the contrary obtained by agreement with the Administrator who designated these officials.

§ 1. The provision of this article does not prejudice the capacity of the Administrator, in any case, to choose the port of disembarkation of the official observers. Nevertheless, only when there is agreement with the master or owner of the ship may such choice necessitate the prolonging of the voyage for more than 50 miles.

ART. 6. Portuguese and foreign ships which enter ports exclusively for the embarking or disembarking of official observers shall enjoy—as regards taxes and duties, general and local, with the exception of pilotage—all the privileges that shall be fixed by the countries parties to the Non-Intervention Agreement.

ART. 7. The owners of ships having regular traffic with Spain may, if they so desire, request that the official observers remain on board constantly, provided that the ensuing extra expense is defrayed by them.

ART. 8. In the event that lanes through which ships must pass are fixed by the International Committee of the Non-Intervention Agreements, masters shall obey those instructions which they receive in that regard.

ART. 9. Naval vessels charged with patrolling and watching the observance of the Non-Intervention Agreement in waters adjacent to Spanish territory are accorded the right to:

(a) Verify the identity of ships of parties to the Non-Intervention Agreement which are proceeding to Spanish ports, ordering such ships to stop in order that one of its officials may examine the ship's papers;

(b) Verify as to the embarkation of official observers, and if this has been done, the master shall give authority for an official of the naval vessel to talk with them;

(c) Ensure that the ships of countries parties to the Non-Intervention Agreement going to Spain proceed in prescribed lanes of passage approved by the International Committee of the Non-Intervention Agreement.

ART. 10. Observing naval vessels to which the preceding article refers are forbidden to make any inspection or visit on board the ships of parties to the Agreement. If, however, the commanders ascertain that the master did not touch the port designated to him for the embarking of observers, or that the ship did not display the signals authorized, they shall call his attention to the obligations imposed upon him by the Non-Intervention Agreement and notify him that he is violating the law of his own country unless he submits to the regulations before entering a Spanish port.

§ 1. In the cases referred to in the body of the present article, the commander of the Portuguese naval vessel shall present his account of the incident to the Minister of the Navy, to be transmitted by the Ministry of Foreign Affairs to the International Committee of Non-Intervention and to the Government of the country to which the ship belongs, in such a way as to form the basis of prosecution for violation in the proper tribunal.

ART. 11. Any master who violates the provisions of Article 1 or who fails to comply with the provisions of Article 2 shall, in criminal prosecution for such violation, be punished by imprisonment for not less than eight days and not more than three years, and by a fine of not more than 10,000\$.

ART. 12. The master shall incur the penalty of fine up to 10,000\$:

(a) If he does not display the signals that have been adopted to designate "observers on board" or "exempted from taking observers";



(b) If he uses the said signals falsely;

(c) If he or any person aboard obstructs the performance of the functions of observers described in Articles 3 and 4;

(d) If he does not stop the ship when requested by a naval vessel in service of observation prescribed in the present law, or if he or any other person aboard obstructs an official of the naval vessel in the said service in the exercise of the duties pertaining to their office.

ART. 13. The complaint for violation shall be based on the report received from the Committee of Non-Intervention, through the Ministry of Foreign Affairs, or on that of the commander of the Portuguese naval vessel who discovered the violation within the territorial waters, the form of procedure in effect in the admiralty courts to be followed in all the proceedings.

ART. 14. The administrators, official observers, and deputy observers attached to the ports of Lisbon and Funchal shall enjoy the privileges and immunities usually granted to diplomatic and consular officers plus all the necessary facilities within the power of the State, owners, or masters to enable them to perform their duties. Their action, however, shall be limited to observation of facts relative to the obligations assumed in the Non-Intervention Agreement reporting to the proper authorities within the terms and for the purpose indicated in the said Agreement.

ART. 15. For the purpose of superintending the conditions of security of navigation in charge of the Captaincy of the ports the official observers shall be considered as passengers.

§ 1. The classification of a ship as a cargo vessel will not be altered by the fact that the official observers together with the passengers on board create a number greater than 12.

ART. 16. Until further provision the Canary Islands are not included within the purview of the present Law.

ART. 17. The ships to be superintended within the terms of the Non-Intervention Agreement are subject to observation by naval vessels only when they enter into waters adjacent to Spanish territory as defined herein in Article 2, and even then observation is limited to the naval vessels flying the flag of the country to which has been assigned the patrol of the zone, and displaying the signal showing the special function conferred upon it.

ART. 18. Naval vessels are excluded from the international superintendence established in the Non-Intervention Agreement described in the present law.

ART. 19. No indemnity shall be due to ship-owners because of deviation and delay of their ships resulting from the application of the present decree-law, when:

(a) The local administrator of the Non-Intervention Agreement, or his representative embark the official observers as rapidly as possible, and never with a delay of over four hours after the master has notified him of his arrival at the port;

(b) The provisions of subdivision (a) do not apply because there has

been an agreement with the owners to embark the official observers outside of the observation port;

(c) The local administrator of the Non-Intervention Agreement cannot comply with the provision of subdivision (a) and furnishes the master with documents certifying that the ship called at the port to receive observers, but could not embark them because there were none present, or for any other reason of *force majeure*.

ART. 20. The Minister of the Navy is authorized to publish necessary regulations for the execution of the Non-Intervention Agreement as provided in the present decree-law.

§ 1. In the regulations of the same Ministry shall be published:

- (1) the ports of embarkation and disembarkation of official observers;
- (2) the signals that have been agreed upon to designate "observers aboard" or "exempted from taking observers";
- (3) observation zones in charge of naval vessels;
- (4) obligatory lanes of passage, in the same zone, that have been fixed by the International Committee of the Non-Intervention Agreement;
- (5) the conditions:
  - (a) of messing and lodging of official observers;
  - (b) payment to the owners:
    - for messing and lodging of official observers;
    - for taxes and duties paid in ports when the ships call only to embark and disembark official observers;
    - for extraordinary expenses possibly incurred by the accommodation of official observers and telegrams sent by them;
- (6) special conditions to be considered in the application of the Non-Intervention Agreement to the Canary Islands;
- (7) the date when this law shall go into effect and the date when its validity shall cease.

## 23

### ROUMANIA

PROVISIONS RELATIVE TO VESSELS TOUCHING AT PORTS OF SPAIN OR OF THE SPANISH POSSESSIONS (APPLICATION OF THE SYSTEM OF OBSERVATION), ISSUED BY THE DIRECTOR OF THE MERCHANT MARINE <sup>1</sup>

(Translation)

SECTION 1. Every vessel proceeding to Spain, or to one of the Spanish possessions, or to the Spanish Zone of Morocco, shall take on board, at one

<sup>1</sup> Supplied by the Government of Roumania. Date not specified.

of the ports of observation, two or more Observers, whose mission it is to supervise the unloading of ships' cargoes in Spanish ports.

SEC. 2. Exceptionally, and on the responsibility of the Administrator of the port of observation, vessels may take on board only one Observer, when such vessels are small, or are loaded with merchandise in bulk, or are in ballast.

SEC. 3. After the embarkation of these Observation Officers, masters of vessels must afford them every facility to enable them successfully to carry out their mission.

Thus:

(a) During the voyage they shall give them all information about the vessel's cargo, allowing them to examine all papers relative to the said cargo.

(b) In the presence of the master or of a delegated officer, the Observation Officers shall have the right to question passengers and members of the crew, and they shall have the right to examine them, their passports, identification papers, and so forth.

(c) The Observation Officers must be allowed to check all persons disembarking, as well as all goods unloaded in the port of disembarkation.

The Observers have the right to request that there be opened up any parcel which may seem to them to contain war material, and so forth.

(d) The Observation Officers on board vessels shall enjoy priority whenever they should wish to use the telephonic and telegraphic services on board the vessels on which they shall be.

SEC. 4. All the facilities indicated in Section 3 must be extended to enable the Observation Officers to watch that no arms or war materials shall be unloaded in a Spanish port, in violation of the Non-Intervention Accord.

SEC. 5. Merchant vessels proceeding to a Spanish port must observe the following rules:

(a) If the vessel is passing through the Straits of Gibraltar, in either direction, it must, before proceeding to a Spanish port, stop at Gibraltar, even though on its voyage it may have already made a stop, as appears in the following rules.

(b) If the vessel passes through the English Channel and is proceeding towards a Spanish port, coming from a port situated north of Dover, it must stop either at Dover or at The Downs.

(c) If the vessel is proceeding towards a Spanish port, coming from a Channel port situated south of Dover, it must stop at Cherbourg.

(d) If the vessel is coming from Ireland, from the Irish Sea, from the Bristol Channel, or from a port situated between Cherbourg and Brest, it shall stop at Brest.

(e) If the vessel is proceeding towards a Spanish port, coming from a port situated south of Brest, on the French Atlantic coast or of the Bay of Biscay, it shall stop at Le Verdon.

(f) If the vessel is proceeding towards a Spanish port, coming from

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the east, or from a port situated in the Mediterranean east of Longitude  $12^{\circ}$ , it shall stop at Palermo. If, however, such vessels must first go to Marseilles for commercial reasons, the Observation Officers shall board them in the port of Marseilles.

(g) If the vessel is going towards a Spanish port, coming from a North African port situated west of Longitude  $12^{\circ}$ , it shall stop at Oran.

(h) If the vessel is proceeding towards a Spanish port, coming from a port situated on the French or Italian coast, between Marseilles and Longitude  $12^{\circ}$  East, or from a port situated in Corsica or Sardinia, it must stop at Marseilles.

(i) If the vessel is proceeding towards a Spanish port, coming from a French port situated in the Mediterranean west of Marseilles, it must stop at Cette.

(k) If the vessel is coming from west of Longitude  $15^{\circ}$ , or from that part of the Atlantic situated south of  $28^{\circ}$  Northern Latitude, it must stop at Madeira, Gibraltar or Lisbon.

(l) If the vessel is coming from a port situated on the Atlantic coast of Morocco, it shall stop at Gibraltar.

If, however, such vessels are proceeding towards one of the Spanish ports situated north of Portugal, then they shall stop at Lisbon.

(m) If the vessel is coming from a Portuguese port, it shall stop at Lisbon.

(n) The manner of supervising vessels of the countries which have adhered to the Non-Intervention Accord that shall touch at ports of the Canary Islands, will be the object of a special consideration.

This mode of supervision shall be agreed upon in the near future, following certain experiments which are to be made.

SEC. 7. Ship-owners [*armatorii*] of Roumanian merchant vessels are required to place at the disposal of the Observation Officers on board, accommodations equivalent to those of the officers. In the case of passenger vessels, the accommodations must be equivalent to that of first class passengers.

SEC. 8. Ship-owners are required to furnish the Observation Officers the same food as that of the ship's master or of first class passengers.

Reimbursement of these expenses will be approved and paid by the International Committee upon recommendation of the International Board for Non-Intervention in Spain.

SEC. 9. The Observation Officers shall travel under the same conditions of liability upon the part of the vessel's master as the passengers with respect to their life and belongings.

SEC. 10. Subject to the approval of the Chief Administrator and the Administrators of each observation port, Observers shall have the right to request the vessel's master to disembark them at any port, provided, however, that, in order to reach such port, the vessel shall not be required to go too much out of its course.

Consequently, masters shall not be obliged to disembark Observers save in a port nearest the course which they expect to follow after leaving Spanish waters, or at most in a port, to reach which they shall not have to deviate from their course more than a maximum of 50 miles.

SEC. 11. Ship-owners carrying on regular trade with Spanish ports may, if they desire and with the consent of the Bureau of the International Committee, be authorized to have Observers remain on board permanently, it being understood that all additional expenses shall be borne by them.

SEC. 12. The representatives of countries in which the ports of observation shall be situated shall agree in the name of their governments that vessels entering a port solely for the purpose of embarking Observation Officers shall be exempt from the payment of all fees, except the pilotage fee.

If such exemption is not possible, then these fees shall at least be reduced.

If, however, neither exemption nor reduction of fees is possible, then all expenses, including the pilotage fee, shall be paid by the Treasury of the Bureau of the International Committee, always provided that the vessel shall not have carried on any commercial operations in that port.

SEC. 13. Nevertheless, the Administrators of the ports of observation shall lend their good offices to the end that, within the limits of possibility, vessels coming to embark Observation Officers shall be exempted from the payment of fees.

SEC. 14. During the period when vessels shall have entered the observation zone (10 miles from the coast), and Observation Officers have been taken aboard, they shall fly a special pennant.

Commanders of such vessels shall be very severely punished if it shall be proved that they hoisted the pennant without having any Observers on board.

SEC. 15. Inside the observation zone, masters of Roumanian merchant vessels shall be obliged to submit to the control of the warships charged with patrolling the zone assigned to them.

Failure to submit to this control will subject the master of the merchant vessel to grave consequences.

In such cases, the commander of the warship shall make a report to his government relating the facts, and the said government shall make representations to the International Committee as well as to the Roumanian Government.

This procedure is to be followed so that the master of the vessel may be brought before the Roumanian Court to be tried for non-compliance with the Non-Intervention Accord.

In order to obviate, during the trial, the necessity of the commander of the warship or of the Administrator leaving their posts, their testimony shall be taken by a commission of inquiry.

SEC. 16. Measures shall also be taken against masters of Roumanian vessels who shall be discovered intending to avoid any provision of the Non-Intervention Accord.

## SWEDEN

## I. LAW REGARDING MEASURES TO PROHIBIT VOLUNTEERS PARTICIPATING IN THE CIVIL WAR IN SPAIN, MARCH 5, 1937

(See Appendix V—Sweden)

## II. ROYAL PROCLAMATION CONTAINING SPECIAL RULES WITH REGARD TO THE LAW OF MARCH 5, 1937, SAME DATE

(See Appendix V—Sweden)

III. ROYAL PROCLAMATION CONTAINING FURTHER RULES RELATING TO THE LAW OF MARCH 5, 1937, APRIL 16, 1937<sup>1</sup>*(Translation)*

His Royal Majesty, acting upon the basis of the rulings in Paragraph 5 of the Law of March 5, 1937, referring to Measures to Prohibit Volunteers Participating in the Civil War in Spain, has found it good to decree as follows:

§ 1. Before calling at Spain a Swedish ship shall take on board one or several Controlling Officers appointed in accordance with the agreement concerning Non-Intervention in Spain to oversee the enforcement of the said agreement. The Controlling Officers are entitled to be on board of the vessel

To embark or disembark a Controlling Officer the ship shall call at a port in accordance with the regulations issued by the Commerce Commission.

§ 2. The Controlling Officers are entitled to control the ships' cargo and passengers for the purpose mentioned in § 1.

The Controlling Officers shall be given accommodations and board, and shall be given the right to use the vessel's radiotelegraph and radiotelephone apparatus.

§ 3. Masters of vessels mentioned in § 1 are required to allow warships belonging to France, Italy, Great Britain, and Germany to make an examination to ascertain whether a Controlling Officer is aboard.

§ 4. Vessels calling at the Canary Islands are subject to the provisions of this Proclamation only in so far as directed by the Commerce Commission.

The provisions of this proclamation applying to Spain apply also to Spanish Possessions and to the Spanish Zone of Morocco.

§ 5. The Commerce Commission has the right to issue further regulations for the enforcement of this Proclamation.

§ 6. Punishment and bringing to court of violations of the provisions of this Proclamation and regulations issued thereunder, also the legal court for judgment of such violations and the payment of the fines and their commutation are provided for in the law of March 5, 1937.

<sup>1</sup> *Svensk Författningsamling*, No. 133, 1937, p. 279.

This Proclamation shall go into effect April 20, 1937; so far as concerns vessels which at this date are en route to Spain, the ruling about taking on board Controlling Officers shall be in force only to the extent to which the Commerce Commission so rules.

This Proclamation will be in force forthwith, but not longer than up to and including February 28, 1938. The regulations which may be issued by the Commerce Commission will not be in effect longer than this Proclamation.

IV. DECREE OF THE ROYAL COMMERCE COMMISSION CONTAINING FURTHER RULES AND REGULATIONS REFERRING TO THE APPLICATION OF HIS MAJESTY'S PROCLAMATION NO. 133 OF APRIL 16, 1937, SAME DATE <sup>2</sup>

*(Translation)*

With reference to His Majesty's Proclamation of April 16, 1937, containing additional regulations referring to the law of March 5, 1937, referring to methods of prohibiting volunteers participating in the civil war in Spain, His Royal Majesty's Commerce Commission hereby issues the following rules referring to the application of the rulings in the above-mentioned decree.

SECTION 1. In this decree, "with Spanish ports," means ports in Spain, in any of the Spanish possessions, and in the Spanish Zone in Morocco. Ports in the Canary Islands are excepted from the application of this decree until further notice.

SEC. 2. (1) Where it is the duty, in accordance with Section 1 of the Proclamation of April 16, 1937, of the master of a Swedish vessel to take on board one or several Controlling Officers mentioned in the said paragraph, the embarkation shall take place in the port or in the roadstead (Observation Port), unless otherwise ordered by sub-section (2), in accordance with the following rules set forth below:

A. For every vessel which passes through the Straits of Gibraltar before calling at a Spanish port, regardless of its port of departure or the direction in which it passes, Gibraltar is decreed to be the Observation Port.

B. In other cases, the following are ruled to be Observation Ports:

- (a) Dover or The Downs for vessels passing through the English Channel on a voyage to a Spanish port from ports north of Dover;
- (b) Cherbourg for vessels other than those mentioned in (a), coming from other ports on the English Channel south of Dover, other than ports between Cherbourg and Brest;
- (c) Brest for vessels coming from the Irish Free State, North Ireland, the Irish Sea or the Bristol Channel, or ports between Cherbourg and Brest;

<sup>2</sup> *Kommerskollegii Forfattningssamling*, 1937, No. 2, Series A.

- (d) Le Verdon for vessels other than those mentioned in (a) coming from French Atlantic or Bay of Biscay ports south of Brest;
- (e) Palermo for vessels passing through the Mediterranean coming from a place in the Mediterranean east of 12 degrees east longitude; however, if the vessel, for loading or unloading or for the embarkation or disembarkation of passengers, calls at Marseilles, the last mentioned port may be used as an Observation Port;
- (f) Oran for vessels other than those mentioned in (e), coming from North Africa west of 12 degrees east longitude;
- (g) Marseilles for vessels other than those mentioned under (e), coming from ports on the French or Italian coast between Marseilles and 12 degrees east longitude, or from Corsica or Sardinia;
- (h) Cette for vessels other than those mentioned in (e), coming from French Mediterranean ports west of Marseilles;
- (i) Madeira, Gibraltar or Lisbon for vessels from the Atlantic Ocean west of 15 degrees west longitude, or south of 28 degrees north latitude;
- (j) Lisbon for vessels coming from Portuguese ports and for vessels planning to call at Spanish ports north of Portugal and which come from Moroccan ports on the Atlantic Ocean;
- (k) Gibraltar for vessels coming from Moroccan ports on the Atlantic Ocean and intending to call at Spanish ports other than those situated north of Portugal.

A Controlling Officer shall be designated by the proper authorities at the Observation Ports. If within four hours after the report of the vessel's arrival has been handed in by the ship's master or the ship's broker, a Controlling Officer or Officers are not placed at the disposal of the vessel, the master may demand a certificate from the mentioned authority showing that the vessel called at the port and that no Controlling Officers could be designated to the vessel.

(2) In special cases where the convenience of the commercial traffic requires it, the authorities mentioned in sub-section (1), last paragraph, may, in the Observation Ports of The Downs (or Dover), Cherbourg, Lisbon, Gibraltar, Marseilles, Palermo and Madeira, make special arrangements for embarking a Controlling Officer in ports other than those mentioned above.

With regard to vessels making regular calls at Spanish ports, the ship-owners may make arrangements with the International Spanish Non-Intervention Board in London concerning Controlling Officers being permanently stationed on the vessels for certain times, it being understood that the owner asking such arrangements will pay the extra expense caused thereby for the controlling organization.

(3) It is the duty of the master of a vessel on which, in accordance with



sub-section (1) or sub-section (2), the first paragraph, Controlling Officers have been taken on board, to see to it that in accordance with the authorities in the port of embarkation, they are disembarked either at the Observation Port which is nearest with regard to the proposed route of the vessel after leaving Spanish waters, or at another port the calling at which will not increase the sailing distance more than 50 nautical miles.

SEC. 3. It is the duty of the master of a vessel on which Controlling Officers have been taken on board in accordance with Section 2, to make arrangements for the facilitation of the duties given to the Controlling Officer. In this regard, it is especially the duty of the master :

- to give the Controlling Officer an opportunity at a convenient time during the voyage, in the presence of the master or of a person designated by the master among the ship's officers, to examine the passports of the passengers and the identification papers of the officers and crew;

- to give all further information regarding the ship's cargo destined for a Spanish port whenever during the voyage he is so asked by the Controlling Officer, and to allow the Controlling Officer to examine papers referring to such cargo;

- to give the Controlling Officer an opportunity to be present at every unloading of goods or disembarkation of persons in Spanish ports;

- to open for examination, at the request of the Controlling Officer, before unloading, every package with regard to which the Controlling Officer has reason to have suspicion that it contains war material sent in violation of the agreement concerning non-intervention in Spain, also to arrange for the required unpacking, packing or sealing;

- also to give the Controlling Officer the same priority in the sending of telegrams which is given to the ship's master.

SEC. 4. It is the duty of the master of a vessel on its way to a Spanish port, whenever the vessel is at a point ten nautical miles from the nearest point on the Spanish coast, to make it possible for the supervision of the shipping to Spanish ports which has been arranged by war vessels belonging to France, Italy, Great Britain or Germany, to allow the commanders of such war vessels to make sure of the identity of the Swedish vessel, and to determine whether the vessel has called at an Observation Port and has taken on board a Controlling Officer, or has been given a certificate such as mentioned in Section 2, sub-section (1), the last paragraph. When the war vessel, in order to fulfill the supervision duty mentioned, in the area designated to the vessel, hails the vessel mentioned in the first part, it is the duty of the master of the vessel immediately to make maneuvers to facilitate the exercise of the supervision, and, when it so requires, to facilitate the coming-on-board of persons from the war vessel whose duty it is to exercise the supervision. In the last-mentioned case, it is the duty of the vessel's master to give the persons coming on board an opportunity to examine the nationality and other papers belonging to the vessel.

To facilitate the supervision by the war vessels, it is the duty of the

master, when Controlling Officers are on board, or when the master has received a certificate mentioned in Section 2, sub-section (1), the last part, as long as the vessel is in the mentioned zone, to fly a special pennant which is brought on board by the Controlling Officer or given out at the Observation Port.

SEC. 5. The accommodations which, in accordance with Section 2 of the above-mentioned Decree of April 16, 1937, shall be given to a Controlling Officer, shall, when the vessel is a passenger vessel, be of such a standard as are furnished to first class passengers, and, with regard to other vessels, be of such a standard as are furnished to a first mate on the Swedish vessel in question. The Controlling Officer shall have the right, in return for compensation in accordance with the rules issued by the International Non-Intervention Committee in Spain, to receive board according to what is given to the master of the vessel or to the passengers in the first (or highest) class of the vessel. The Controlling Officer shall be regarded as a passenger in all matters referring to life and property.

This decree goes into effect April 20, 1937, and shall remain in effect as long as the above-mentioned Decree of April 16, 1937, is in effect. Vessels equipped with wireless apparatus which, on a voyage to a Spanish port, had already passed the designated Observation Port on April 20, 1937, at 1 o'clock (zero o'clock Greenwich time), are exempted from the duty of taking on board a Controlling Officer during the voyage. A vessel which is without radio apparatus and which at the above-mentioned time is at sea on a voyage direct to a Spanish port is also exempt from the duty mentioned.

V. ROYAL PROCLAMATION AMENDING PROCLAMATION OF APRIL 16, 1937,  
APRIL 24, 1937<sup>3</sup>

(Translation)

His Royal Majesty, due to the Agreement concerning Non-Intervention in Spain, having ordained by the decree of April 16, 1937, that control of, among other things, of Swedish vessels bound for Spanish Possessions shall be in effect, has found it good to decree that what is set forth in the above-mentioned decree shall only be enforced on vessels calling at the Spanish Possessions of Ifni, Rio de Oro, Rio Muni, Fernando Po on the west coast of Africa to the extent that the Commerce Commission indicates.

VI. PROCLAMATION OF THE ROYAL COMMERCE COMMISSION RELATING TO  
THE ROYAL PROCLAMATION GIVEN ABOVE, APRIL 24, 1937<sup>4</sup>

(Translation)

Regarding His Majesty's Proclamation of April 23 (24), 1937, referring to exceptions to the application of the Decree of April 16, 1937, with further particulars relating to the law of March 5, 1937, referring also to measures

<sup>3</sup> *Svensk Forfattningssamling*, No. 150, 1937, p. 311.

<sup>4</sup> *Kommerskollegii Forfattningssamling*, No. 3, 1937, Series A.

to prohibit volunteers participating in the civil war in Spain, His Royal Majesty's Commerce Commission Decrees that Section 1 of the Commission's Decree of April 16, 1937, with further reference to the above-mentioned Royal Decree of April 16, 1937, shall have the following wording:

"SECTION 1. In this decree . . . Morocco.

From the application of this decree the following ports are excepted until further notice: ports of the Canary Islands, of Fernando Po, Ifni, Rio de Oro, and Rio Muni on the west coast of Africa."

VII. DECREE OF THE ROYAL COMMERCE COMMISSION CHANGING THE WORDING OF SECTION 4 OF ITS DECREE OF APRIL 16, 1937, MAY 3, 1937<sup>5</sup>

(Translation)

His Majesty's Commerce Commission decrees that Section 4 of the Commission's Decree of April 16, 1937, with further regulations referring to the application of His Majesty's Decree of April 16, 1937, and with further information with regard to the law of March 5, 1937, referring to the measures to prohibit volunteers participating in the civil war in Spain, shall have the following changed wording:

"SECTION 4. It is the duty . . . belonging to the vessel.

To facilitate . . . the Observation Port.

It is the duty of the master of a vessel with a destination of a place on the Spanish coast between Cape de Gata and Cape Orepesa, in which zone German war vessels have the obligation to supervise shipping, to bring his vessel, in case the vessel has not already been examined by a war vessel, to any of the following points, namely:

(a) A point ten nautical miles in the direction 180° (straight south) from the lighthouse on Escombrera Island outside *Cartagena*;

(b) A point ten nautical miles in the direction 90° (straight east) from the lighthouse on the cliff on the southern side of the Breakwater outside *Alicante*; or

(c) A point ten nautical miles in the direction 90° (straight east) from the flashing light on the further end of the Dique del Norte outside *Valencia*.

When the course of the vessel goes inside the ten-mile limit along the above-mentioned part of the Spanish coast, the vessel, observing the above, should be brought to the point mentioned under (a) if it comes from points west, and to the point mentioned under (c) if it comes from the north. If the vessel approaches the coast from the open sea (more than ten nautical miles from the coast), the vessel should be brought to the one of the three points in question which is nearest to the vessel's route to the port of destination.

The master of a vessel who has not brought his vessel exactly to the particular point prescribed for the vessel shall, however, not be deemed to have

<sup>5</sup> *Kommerskollegii Forfattningssamling*, No. 5, 1937, Series A.

acted in violation of the regulations if the vessel is brought to a distance of not more than  $1\frac{1}{2}$  nautical miles from that point."

VIII. DECREE OF THE ROYAL COMMERCE COMMISSION CHANGING THE WORDING OF SECTION 2, SUB-SECTIONS (1) AND (2) OF ITS DECREE OF APRIL 16, 1937, MAY 7, 1937<sup>6</sup>

(Translation)

His Majesty's Commerce Commission Decrees that Section 2, sub-sections (1) and (2) of the Commission's Decree of April 16, 1937 . . . shall have the following changed wording:

SECTION 2

"(1) Where it is the duty . . . ruled to be Observation Ports:

(a) *Dover* for vessels passing through the English Channel on a voyage to Spanish ports from a port north of Dover;

. . . . .

(2) In special cases where the convenience of the commercial traffic requires it, the authorities mentioned in sub-section (1), last paragraph, may, in any of the Observation Ports of Dover, Cherbourg, Lisbon, Gibraltar, Marseilles, Palermo, Madeira, make special arrangements for embarking a Controlling Officer in ports other than those mentioned above.

With regard to vessels . . ."

IX. LAW CHANGING THE WORDING OF SECTION 4 OF THE LAW OF MARCH 5, 1937, MAY 28, 1937<sup>7</sup>

(Translation)

We Gustave, . . .

§ 4

. . . . .

(Add after the sub-paragraph reading: "also see to it that anybody else accompanying the vessel . . .".)

To see to it that no war material is carried to Spain in the vessel.

. . . . .

X. ROYAL PROCLAMATION FURTHER REFERRING TO THE LAW OF MARCH 5, 1937, MAY 28, 1937<sup>8</sup>

(Translation)

With the support of § 9 of the Law of March 5, 1937, referring to Measures to Prohibit Volunteers Participating in the Civil War in Spain, His

<sup>6</sup> *Kommerskollegii Forfattningsamling*, No. 6, 1937, Series A.

<sup>7</sup> *Svensk Forfattningsamling*, No. 275, 1937, p. 527.

<sup>8</sup> *Ibid.*, No. 276, 1937, p. 528.

Royal Majesty has found it good to decree that the rulings referring to war material in paragraph 4 of the said law shall mean the kinds of goods mentioned in the decree of December 19, 1930 (No. 437) referring to the Prohibition of the Exportation of Certain Goods from this Country.

This law shall go into effect the day after it is published in the *Svensk Forfattningssamling*.

XI. DECREE OF THE ROYAL COMMERCE COMMISSION CHANGING THE WORDING OF SECTION 2, SUB-SECTIONS (1) AND (2) OF ITS DECREE OF APRIL 16, 1937, JUNE 15, 1937<sup>9</sup>

(Translation)

His Majesty's Commerce Commission Decrees that Section 2, sub-sections (1) and (2) . . . shall have the following changed wording:

SECTION 2

“(1) Where it is the duty . . . ruled to be Observation Ports:

(a) *Dover* for . . . of *Dover*;

(b) *Dover* or *Brest* for vessels, other than those mentioned in (a), coming from other ports on the English Channel south of *Dover* between *Cherbourg* and *Brest*;

(c) *Brest* for . . . and *Brest*;

. . . . .

(2) In special cases where the convenience of the commercial traffic requires it, the above-mentioned authority in sub-section (1), last paragraph, in any of the above-mentioned Observation Ports, may, after a ruling, make special arrangements for embarking a Controlling Officer in ports other than the above.

With regard to vessels . . .”

XII. DECREE OF THE ROYAL COMMERCE COMMISSION CHANGING THE WORDING OF CERTAIN SECTIONS OF ITS DECREE OF APRIL 16, 1937, AS AMENDED BY ITS SUBSEQUENT DECREES. SEPTEMBER 25, 1937<sup>10</sup>

(Translation)

. . . . .

“SECTION 2. (1) Where it is the duty . . . ruled to be Observation Ports:

(a) *Dover* for vessels other than those mentioned under (f) or (g) in 1, passing through the English Channel on a voyage from ports north of *Dover*.

<sup>9</sup> *Kommerskollegii Forfattningssamling*, No. 9, 1937, Series A.

<sup>10</sup> *Ibid.*, No. 11, 1937, Series A.

(*b*) Falmouth for vessels other than those mentioned under (*f*) or (*g*) in 1, coming from the Irish Free State, North Ireland, the west coast of Scotland, the Irish Channel or the Bristol Channel;

(*c*) Le Verdon for vessels other than those mentioned under (*a*) coming from French ports on the Atlantic Ocean or the Bay of Biscay south of Brest;

(*d*) Dover or Falmouth for vessels other than those mentioned under (*a*) or (*e*) or (*f*) or (*g*) in 1, coming from a port on the English Channel south of Dover;

(*e*) Falmouth or Le Verdon for vessels other than those mentioned under (*f*) or (*g*) in 1, coming from a port between Cherbourg and Brest;

(*f*) Dover, Falmouth or Le Verdon for vessels coming through the English Channel from a port north of Dover, or from a port on the English Channel south of Dover, or from the Irish Free State, North Ireland, the west coast of Scotland, the Irish Channel and the Bay of Bristol, or from a port between Cherbourg and Brest and which, before calling at a Spanish port, intends to call at a French port;

(*g*) Lisbon:

1. For vessels coming through the English Channel from a port north of Dover, or from ports on the English Channel south of Dover, or from the Irish Free State, North Ireland, the west coast of Scotland, the Irish Channel, the Bay of Bristol, or from ports between Cherbourg and Brest, and which, before calling at a Spanish port, intends to call at a Portuguese port,
2. For vessels coming from Portuguese ports, and
3. For vessels intending to call at a Spanish port north of Portugal if the vessel comes from a Moroccan port on the Atlantic Ocean;

(*h*) Gibraltar for vessels coming from Moroccan ports on the Atlantic Ocean and intending to call at Spanish ports other than such as are situated north of Portugal;

(*i*) Palermo for vessels passing through the Mediterranean coming from a place in the Mediterranean east of 12 degrees east longitude; however, if the vessel, for loading or unloading or for embarking or disembarking passengers, calls at Marseilles, the last mentioned port may be used as an Observation Port;

(*j*) Oran for vessels other than those mentioned in (*i*) coming from North African ports west of 12 degrees east longitude;

(*k*) Marseilles for vessels other than those mentioned under (*i*) coming from ports on the French or Italian coast between Marseilles and 12 degrees east longitude, or from Corsica or Sardinia;

(*l*) Cette for vessels other than those mentioned in (*i*) coming from French Mediterranean ports west of Marseilles;

(*m*) Madeira, Gibraltar or Lisbon for vessels from the Atlantic Ocean

west of 15 degrees west longitude, or south of 28 degrees north latitude.

A Controlling Officer . . . to the vessel.

(2) [Same as Decree of June 15, 1937.]

(3) [Same as Decree of April 16, 1937.]

SEC. 3. [Same as Decree of April 16, 1937.]

SEC. 4. [Same as Section 5 of Decree of April 16, 1937. Section 4 of April 16th Decree is omitted in this Decree.]

This Decree goes into effect October 1, 1937, and shall remain in effect as long as the above-mentioned Decree of April 16, 1937, is in effect. By this Decree, the Decree of the Commerce Commission of April 16, 1937, relating to this subject, is no longer in force."

### XIII. ANNOUNCEMENT OF THE COMMERCE COMMISSION REGARDING SIGNALS FOR EMBARKING CONTROLLING OFFICERS AFTER DARK, NOVEMBER 3, 1937<sup>11</sup>

*(Translation)*

His Majesty's and the Royal Commerce Commission's Circular Referring to Certain Identification Signals to facilitate the embarkation of Controlling Officers in an Observation Port, in accordance with the Regulations of the Commerce Commission's Decree of September 25, 1937 (Ser. A., No. 11). . . .

It is herewith announced that in accordance with the information given out by the International Non-Intervention Board in London (International Board for Non-Intervention in Spain), until further notice when a vessel during darkness calls at an Observation Port to embark a Controlling Officer, in order to limit the time necessary for this purpose, and in order to facilitate the work of the Non-Intervention craft in bringing out the Controlling Officer, four long dashes will be exchanged as an identification signal between the vessel and the Non-Intervention craft.

<sup>11</sup> *Kommerskollegii Forfattningsamling*, No. 12, 1937, Series A.

## 25

### TURKEY

#### REGULATIONS REGARDING THE CONTROL OF TURKISH MERCHANT VESSELS SAILING TO SPANISH WATERS<sup>1</sup>

*(Translation)*

In accordance with the Decision No. 2/6773, arrived at by the Cabinet on 4/6/937, the regulations for the control of the Turkish merchantmen sailing to Spanish waters are as follows:

<sup>1</sup> Supplied by the Government of Turkey. Date not specified.

SECTION 1. All Turkish vessels, masters and owners alike, will abide by the decisions arrived at on March 8, 1937, by the Non-Intervention Committee in Spanish Affairs regarding the shipping control system.

SEC. 2. All vessels, excepting warships, bound for Spain or Spanish Morocco, will take on at least two or more Control Officers approved by the International Committee at such ports as are mentioned in Section 6. On arrival in Spanish waters, these officers must be taken wherever the administrator or his assistant, appointees of the International Committee, at the harbor, directs them. (Only small boats with or without cargo plying between different ports may, at the responsibility of a Control Port Administrator, take on only one Observer.)

SEC. 3. The duties of the Control Officers on board are as follows:

(a) To decide whether or not arms and war materials such as are mentioned in the Non-Intervention Agreement are being unloaded at Spanish ports;

(b) To determine whether or not an alien intent on joining either side of the conflict is being allowed to land at a Spanish port contrary to the Non-Intervention Agreement;

(c) To ascertain on leaving Spanish ports whether there may be passengers or members of the ship's crew who, contrary to the above-mentioned agreement, refuse to return on board after their shore leave.

SEC. 4. Masters of Turkish vessels are obliged to give the following facilities to Control Officers who come on board:

(a) Always to give the required information concerning cargoes carried to Spain and to show manifests if necessary;

(b) To make it possible for Control Officers to examine either in person or through a ship's officer, the passports of passengers on board bound for Spain, as well as the identification papers of officers and the crew. They should be given the right to question passengers and are entitled to get all the information they ask for;

(c) To insure the presence of Control Officers when cargoes are to be unloaded and passengers landed at a Spanish port. Also at their request, to unpack all suspicious looking packages to determine whether they contain war materials banned by the agreement of the Non-Intervention Powers. To repack and seal again the packages after the search.

SEC. 5. If, contrary to the provisions of the Non-Intervention Agreement, any banned war materials or arms are discovered by Control Officers on board a Turkish vessel, the master in charge must resist by all possible means at his command any attempt to unload such material or to land such passengers at a Spanish port.

SEC. 6. Turkish merchantmen en route to Spanish waters must stop at the following ports of call to pick up Control Officers:

(a) Those passing through the Straits of Gibraltar in either direction must stop at Gibraltar;



(b) Those passing through the English Channel en route to Spain must stop either at Dover or at The Downs;

(c) Those starting for Spain from a port on the English Channel south of Dover must stop at Cherbourg;

(d) Those starting for Spain from ports located between Cherbourg and Brest, or from points in Ireland as well as ports on the shores bordering the Irish Sea, including the Bay of Bristol, must stop at Brest;

(e) Those starting for Spain from French Atlantic and Gulf of Biscay ports south of Brest must stop at Le Verdon;

(f) Those starting for Spain from points east of 12 degrees longitude East in the Mediterranean must make a stop at Palermo. However, if for any commercial reasons they must call at Marseilles before touching the Spanish shores, they will have the right to pick up Control Officers at Marseilles;

(g) Those starting for Spain from points west of 12 degrees longitude East, on the North African shores, must stop at Oran. Those referred to in paragraph (f) are exempt from this ruling;

(h) Those not referred to in paragraph (f) and starting for Spain from French or Italian ports located between Marseilles and 12 degrees longitude East must stop at Marseilles. The present ruling applies also to those leaving Corsican and Sardinian ports en route to Spain;

(i) Those starting for Spain from French Mediterranean ports west of Marseilles and not referred to in paragraph (f), must call at Cette;

(k) Those starting for Spain from points west of 15 degrees longitude West or south of 28 degrees latitude North in the Atlantic Ocean must make a stop either at Madeira, Gibraltar or Lisbon;

(l) Those starting for Spain from ports on the Atlantic coast of Morocco must stop at Gibraltar. Those bound for north Spanish ports must stop at Lisbon;

(m) Those starting for Spain from Portuguese ports must stop at Lisbon.

SEC. 7. In exceptional cases the administrators or their assistants at the afore-mentioned ports may direct incoming vessels to make stops at other ports of call in order to pick up Control Officers.

SEC. 8. If the vessels are only cargo ships and the limited passenger accommodations are similar to those of the officers on board, the Control Officers are entitled to first class board and room. The ship owners will be paid for the expenses incurred in this respect by the International Board, according to a scale approved by the International Committee. The standardized rates for the board of Control Officers accepted on April 12, 1937, by the International Committee are as follows:

(1) The owners of a cargo vessel which can safely accommodate only 12 passengers, will receive 5 shillings a day per Controller.

(2) The owners of passenger vessels, which do not exceed 7000 tons, will receive 7 shillings, 6 pence a day per Controller.

(3) If the tonnage of a vessel is in excess of 7000 tons, the owner will receive 10 shillings a day per Controller.

(4) The registered gross tonnage is the basis for these calculations.

SEC. 9. Control Officers are permitted to exercise diplomatic rights and have preference in the use of wireless communication. Regarding the security of life and property, they and the passengers have the same rights, but from the administration point of view, they cannot be treated as passengers.

SEC. 10. The administrator at a port of call or his assistant can demand that a Turkish merchantman land the Control Officers on board at various ports without Spanish territorial waters provided this does not unduly lengthen the vessel's course. In this respect masters will follow the instructions received from the administrator of the port where the officers were picked up, and, leaving Spanish waters they will proceed to the port designated, provided this does not lengthen the vessel's course by more than 50 nautical miles.

SEC. 11. Ship owners whose vessels ply regularly between different Spanish ports, can assure the permanent presence of Control Officers on their vessels by applying to the International Board, provided they undertake to pay the necessary expenses.

SEC. 12.

(a) Control Officers must be embarked at the most within four hours from the time the administrator or his assistant at a control port have been notified of a vessel's arrival.

(b) If the administrator of such a port or his assistant does not comply with the regulations enumerated in paragraph (a), and a vessel, following instructions, makes the port only to find out through an official document that there are no Control Officers available, the ship owner cannot demand compensation for making the stop and none is provided for.

Vessels that have picked up Control Officers from ports of call or which have secured papers proving that there were no officers available, will hoist a special flag indicative of the completion of all formalities. This particular flag consists of two black circles on a white background, and can be obtained by masters from the administrators at the control port.

SEC. 13. If a vessel is obliged to enter Spanish territorial waters because of stormy weather or for any other valid reason without going through the formalities mentioned above, her master is obliged to give satisfactory explanations to the enquiries made by the commanders of warships in charge of patrol and search, concerning the vessel's port of departure as well as her destination.

SEC. 14. Vessels touching at control ports strictly within the regulations that govern the International Control System, will be exempted (with the exception of pilot's fees) from all taxes and related expenses if the Government owning the port agrees thereto. Otherwise a settlement must be effected

through a local government fiscal bureau. In case such exemptions and discounts are not available for them and if the stop is made merely to pick up or to leave Control Officers, the payment of the unavoidable taxes and expenses including the pilot's fee, will be reimbursed by the treasury of the International Bureau.

Vessels touching these same ports for commerce cannot benefit from the rights mentioned herein.

## 26

## UNION OF SOVIET SOCIALIST REPUBLICS

## I. DECREE PROHIBITING ENTRANCE OF VOLUNTEERS INTO SPAIN

(See Appendix V—U.S.S.R.)

## II. ADMINISTRATIVE ORDER REGARDING SOVIET VESSELS AND OBSERVATION AND CONTROL SYSTEM

(Text unprocurable.)

## 27

## YUGOSLAVIA

No measures adopted.

## B

## SWITZERLAND

No measures adopted.



## APPENDIX VIII

### DOCUMENTS CONCERNING THE PROPOSED MODIFICATION OF THE NAVAL PATROL SYSTEM, THE RECOGNITION OF BELLIGERENCY, AND THE WITHDRAWAL OF VOLUNTEERS FROM SPAIN

#### I. REPLY OF THE SPANISH GOVERNMENT TO A COMMUNICATION FROM THE GOVERNMENTS OF GREAT BRITAIN, FRANCE, GERMANY AND ITALY RE- GARDING THE FOUR-POWER AGREEMENT OF JUNE 12, JUNE 25, 1937<sup>1</sup>

##### *(Translation)*

1. The Government of the Republic can only express the surprise which has been caused to it by the fact that this communication, the object of which falls entirely within the application of the Non-Intervention Accord, was not presented to it in the name of the Committee legally constituted at London to assure the accomplishment of that accord, but in the name of four of its members. While it is true that the note refers to questions connected with the naval control accepted by the four countries in the name of which it has been presented, it is none the less true that these countries are acting as mandatories of those which are represented on the London Committee. Furthermore, the propositions announced in the note imply in the case of their realization fundamental modifications of the methods of control established by the Non-Intervention Committee.

For these aforementioned reasons, the Government of the Republic is of the opinion that the propositions of the four mandatory Powers in the service of naval control would be greatly facilitated if they had been made in the name of the Non-Intervention Committee.

2. The Government of the Republic is disposed, in principle, to examine every proposition tending to prevent the repetition of incidents such as those which have motivated the observations contained in the British note of the 9th instant. It deems itself, however, in the obligation of drawing the attention of the Government of the United Kingdom to the impossibility in which it finds itself to proceed to the examination of the propositions contained in the note, and this inasmuch as they are not accompanied by other propositions destined to guarantee the security of the merchant ships, the ports and the cities of the Spanish coasts against the attacks, more or less overt, of which they have been the object on different occasions on the part of German and Italian ships of war, by propositions destined also to prevent these

<sup>1</sup> Text in French in *L'Europe Nouvelle*, Oct. 9, 1937, Supplement, p. iv.

foreign ships from continuing their collaboration with the naval units in the control of the rebels. Not to protest against this unilateral proposition contained in the note of the British Government would imply upon our part acceptance of the thesis and of the sanction that the withdrawal from the participation in the control has been motivated by an aggressive thought on the part of the Spanish Government and of the Loyalist forces toward the vessels which exercise the above-mentioned control. Since the month of December, the Spanish Government has denounced on several occasions the danger which occurs to it from the confiding of the control before our coasts to the ships of hostile nations.

3. Conscious of the gravity of the present circumstances and faithful to what has always been its line of conduct, our Government must not close in a purely negative attitude. The new suggestion which it offers would be that the Non-Intervention Committee would incorporate in the proposition which should have been submitted in its name to the consideration of the Spanish Government, principles which would be calculated to guarantee the security of the Spanish coasts and ships against the attacks of the German and Italian ships which exercise control, or which would prevent the latter from continuing their collaboration with the rebel vessels; and, to that end, the Government of the Republic declares that it would welcome with sympathy any proposition from the Non-Intervention Committee tending to emphasize the international character of the naval control forces, for example the presence of neutral observers representing the Non-Intervention Committee on board the control vessels. That measure would, without any doubt, facilitate thus the exercise of the control by armed "trawlers" or by small auxiliary units and not by the great units of naval fleets. Without any doubt, this would reduce the risk of incidents which the Government of the Republic cannot cease to regard as being inherent in the control.

4. Finally, the Government of the Republic cannot hesitate to protest most energetically against the employment in the British note of the 9th instant, of the expression: "the parties in conflict," which establishes an equivalence between the Government of the Spanish Republic and the factions rising in rebellion against the State.

## 2. PROPOSALS SUBMITTED BY THE GOVERNMENT OF THE UNITED KINGDOM FOR THE WITHDRAWAL OF VOLUNTEERS FROM SPAIN, JULY 14, 1937<sup>2</sup>

At the last meeting of the Non-Intervention Committee, held on the 9th July, His Majesty's Government in the United Kingdom were entrusted by their colleagues on the Committee with the task of drawing up proposals which should aim at closing the present gap in the control scheme and enable the policy of non-intervention to be continued. This task has been no easy one. For any proposals which can be put forward with any hope of success must not only harmonise the widely divergent views which have been

<sup>2</sup> *British Parliamentary Paper*, Spain No. 2 (1937), Cmd. 5521.

expressed, but must also give promise of an effective system of non-intervention.

His Majesty's Government have, however, bent their best endeavours to their task, and have evolved a scheme which they herewith submit to other Governments represented on the Committee, in the hope that it may lead to an agreed solution of the present difficulties. In submitting it, they would, however, make one observation. It is admittedly a compromise between varying points of view; it can only be successful if it is accepted by the Governments concerned in a spirit of compromise. All the nations represented on the Committee have repeatedly expressed the view that they wish non-intervention in the Spanish conflict to continue. They have now an opportunity to give to that wish practical effect. Unless a greater spirit of international co-operation is evident than has been achieved in the past, this scheme will fail, and the nations of Europe will be faced with a new and infinitely more dangerous situation. His Majesty's Government in the United Kingdom therefore urge other nations represented on the Non-Intervention Committee to give to these proposals their immediate consideration, and in the event of their being accepted, to devote a real spirit of international collaboration to their practical application.

#### OUTLINE OF PROPOSALS

##### (A) *Reconstruction of the System of Supervision*

###### *Supervision of traffic entering Spain by sea*

1. (a) The system of placing observers on ships visiting Spanish ports to be continued.

(b) The naval patrol system to be discontinued and replaced by the establishment, with the consent of both parties, of international officers in Spanish ports under proper safeguards. These officers would perform the functions hitherto carried out by the naval patrol, *i.e.*, ascertaining that the requirements of the scheme as regards carrying observers on board are complied with.

###### *Supervision of traffic entering Spain by land*

2. The system of supervision on the land frontiers to be restored at once.

##### (B) *Further Measures for Meeting the Present Situation and for Filling Certain Gaps in the Supervision System*

3. With a view to the more effective application of the policy of non-intervention, all Governments parties to the Non-Intervention Agreement to recognise the two parties in Spain as possessing a status which justifies them in exercising belligerent rights at sea, in accordance with the rules governing such exercise, but subject to the following special conditions:

(a) That the contraband lists adopted by the belligerents shall be identical with the list of prohibited goods adopted by the Non-Interven-

tion Committee. In other words, the Powers will recognise limited contraband lists only. This, however, will not preclude them from adding certain goods to those regarded as contraband under the Non-Intervention Agreement. Such additions will be a subject of negotiation between the Committee as a whole and the two belligerents.

(b) That as a corollary to (a) the two parties will agree, in the exercise of belligerent rights at sea, to allow the unmolested passage of ships carrying observers and flying the flag of the Non-Intervention Committee. This, however, will not apply where the ship is engaged in unneutral service (such as the carriage of troops or the transmission of intelligence) or breach of a blockade which has been duly notified and is effectively maintained.

(c) That since international shipping between countries other than Spain is obliged in certain areas to pass near the Spanish coast, no steps shall be taken by either party to impede or interfere with the passage of neutral shipping not engaged in traffic with Spain.

(d) A Government which is a party to the Non-Intervention Agreement will be entitled to protect ships flying its flag against the exercise of belligerent rights in cases where the conditions laid down in (a), (b) or (c) are not being complied with.

4. In order to preclude the carriage of arms on ships which are entitled to have observers on board, the Non-Intervention Agreement to be extended so as to prohibit the carriage to Spain, from any port, by ships entitled to fly the flag of any of the parties to the Agreement, of goods on the prohibited list.

5. The Committee to inform non-member Powers of their intention to recognise the belligerent status of the two parties on the above terms and to invite their co-operation with a view to making the policy of non-intervention more effective. Any Governments which are prepared to become parties to the Non-Intervention Agreement and to recognise the belligerent status of the two parties on the above terms to be invited to avail themselves, for ships flying their flag, of the facilities for taking on board observers at the established "control" ports.

6. The Committee to consider further the question of the employment by the two parties of foreign aircraft which enter Spain under their own power, and to examine in particular the possibility of requesting the two parties to accept foreign observers in specified aerodromes in Spain.

#### (C) *Withdrawal of Foreign Nationals*

7. (a) The Committee to pass a unanimous resolution in favour of the withdrawal from Spain of all persons whose evacuation is recommended in the Report of the Technical Sub-Committee (N. I. S. (36) 525).

(b) A Commission to be sent out to either party in Spain to make arrangements for and to supervise the withdrawal of the persons in question as soon as possible.



(c) All Governments to undertake to collaborate in such practical measures as may be found necessary for effecting these withdrawals.

(D) *Execution of Above Programme*

8. His Majesty's Government propose that the above programme should be carried out in the following stages:

(i) Establishment of officers in Spanish ports, and withdrawal of naval patrol, as soon as possible;

(ii) Establishment of commissions to make arrangements for and supervise the withdrawal of foreign nationals, and extension of the Non-Intervention Agreement as proposed in paragraph 5, to follow (i) as quickly as possible;

(iii) Recognition of belligerent rights to become effective when the Non-Intervention Committee place on record their opinion that the arrangements for the withdrawal of foreign nationals are working satisfactorily and that this withdrawal has in fact made substantial progress.

(E) *Immediate Action by His Majesty's Government to be Authorised by the Committee*

9. His Majesty's Government to be authorised by the Committee to enter immediately into discussions with the two parties in Spain on the following points:

(1) The establishment of officers in Spanish ports (paragraph 1(b) above).

(2) Withdrawal of foreign volunteers (paragraph 7 above), including the establishment of the Commissions in Spain.

(3) The conditions on which belligerent rights are to be granted (paragraph 3 above).

3. NOTE OF THE BRITISH AND FRENCH GOVERNMENTS TO THE ITALIAN GOVERNMENT, OCTOBER 2, 1937<sup>3</sup>

The Governments of France and the United Kingdom have noted with pleasure that as a result of the conversations which have taken place in Paris between their naval experts and those of the Italian Government it is now possible to contemplate the modification of the arrangement signed at Nyon on the 14th September in such a manner as to secure the participation of Italy in the measures agreed upon for rendering the arrangement effective. Favourable conditions are thus created to enable the three Governments to examine in a spirit of perfect frankness the situation arising from the prolongation of the Spanish conflict.

The two Governments have, moreover, noted with satisfaction the assurances given by his Excellency Count Ciano to the British Chargé d'Affaires

<sup>3</sup> *British Parliamentary Paper*, Spain No. 3 (1937), Cmd. 5570.

in Rome that there was no present intention of permitting the despatch of further volunteers to Spain. They have also taken note of the declaration made to M. Delbos by the Italian delegate at Geneva that Italy had no intention of making the smallest change in the territorial status of Spain; that she had no designs upon the Balearic Islands, and that the integrity of the continental and insular territory of Spain would be strictly respected. For their part the two Governments willingly renew the same assurances to the Italian Government. They further desire to declare that, in accordance with what is the very essence of the non-intervention agreements, they consider themselves bound to respect the political independence of Spain.

The Governments of France and the United Kingdom earnestly desire that the civil strife in Spain shall cease to be a cause of international unrest and suspicion, and that in that part of Europe conditions shall develop which shall permit of progress being made elsewhere towards general appeasement. But they are convinced that no considerable improvement in the situation is possible until further measures have been carried out to make the policy of non-intervention effective by the withdrawal of the non-Spanish nationals who are now taking part in the struggle. So long as large numbers of foreigners continue to assist both sides, the risk of grave international disturbances will be present and will inevitably tend to increase until at least a substantial number are withdrawn. The London Committee has, of course, been already apprised of this programme, but the difficulties it has come up against have practically paralysed its action, and it appears that a previous agreement between the three Powers is necessary to overcome these obstacles. The view of the two Governments is that the elaboration of such an agreement should form one of the essential elements of the frank and cordial conversations to which they invite the Italian Government. Moreover, greatly as the French and United Kingdom Governments desire to maintain the obligations which they have undertaken resulting from the international agreements respecting the supply of arms and men to Spain, they cannot conceal from themselves the difficulty of preserving these conditions unless some such steps are taken to make the policy of non-intervention really effective.

With this end in view, the French and United Kingdom Governments have the honour to invite the Italian Government to join with them in conversations with the object, if possible, of reaching an agreement on measures to carry this policy into effect. In their view, such an agreement would not only make an important contribution to the improvement of the political situation, but once such a withdrawal has been effected the question of the recognition on certain conditions of belligerent rights to the two parties should be capable of solution. It is the earnest desire of the two Governments that these conversations, to which they attach the utmost importance, should be held at the earliest possible moment.

4. REPLY OF THE ITALIAN GOVERNMENT, OCTOBER 9, 1937 <sup>4</sup>

The Royal Ministry for Foreign Affairs have the honour to refer to the communication of His Britannic Majesty's Embassy dated the 2nd instant.

The Fascist Government willingly take note of the assurances furnished by the British Government regarding the political independence of Spain. For themselves they do not need to recall the assurances furnished on repeated occasions, in the most solemn fashion, regarding the political independence and consequently the territorial integrity of Spain, its mainland, its islands and its colonies.

The Fascist Government fully share the hope expressed by the British Government that the internal struggles of Spain may cease to be a cause of suspicion and friction between the other nations, and that the situation may evolve in such a manner that in other fields also progress may be realised towards a general *détente*. They are ready with every possible good will to examine, as they have always done in the past, all means which may be thought suitable to render effective the policy of non-intervention.

Among the elements constituting this policy the British Government lay particular emphasis upon the question of the volunteers and their withdrawal.

Nevertheless, in order to indicate clearly the individual political positions and the responsibilities deriving from them, and not for any untimely emphasis of polemic, it is opportune to recall how it was actually Italy, together with Germany, who was the first to draw attention to the question of volunteers, and to insist that their despatch should be forbidden, and subsequently that provisions should be taken for their withdrawal. The Italian Government claim for themselves and for the German Government the merit of the initiative directed towards the consideration of this question as one of the indispensable elements of any policy of non-intervention. In so far as they themselves are concerned, they recall the explicit declaration made to the French Ambassador by the Italian Foreign Minister so long ago as August, 1936, to the declarations obtained in the *note verbale* of the 7th January last addressed to the Embassies of Great Britain and France, to that of the 25th January last addressed only to the Embassy of Great Britain, and finally to the repeated declaration made by the Italian representative on the Committee of Non-Intervention in London on the occasion of the last discussion of this question.

The Fascist Government have the honour to confirm that, so far as concerns the whole question of non-intervention, in its various aspects and elements, they maintain the same order of ideas as that which emerges from all the above-mentioned declarations.

In their communication of the 2nd instant, the British Government suggest that conversations should be initiated between the three Governments of France, England and Italy for the purpose of reaching, if possible, agree-

<sup>4</sup> *Ibid.*

ment on measures designed to ensure the application of the policy of non-intervention.

The British Government suggest such a procedure with the intention of obviating the difficulties which have occurred at the London Committee.

The Fascist Government appreciate in all its value the British suggestion, but doubt whether the difficulties in question can be overcome by way of ingenuities or device of procedure and above all, by that proposed. They draw the attention of the British Government to the fact that the matter under discussion does not regard some States alone; but, on the contrary, directly interests other States besides France, Great Britain and Italy. Further, the fact should not be overlooked that, without the adherence of Burgos and Valencia, any decision on the question would fail to lead to practical results. All the more so when one remembers the attitude of the representative of Valencia, who, by his specious pretext, excluded in his speech in Geneva any possibility of the evacuation of the volunteers enrolled in the armed forces of his Government. The proposed discussion, in the absence of the other States, would lack the elements indispensable for reaching an agreement. It is the conviction of the Fascist Government that the adoption of procedures—even if only preliminary—outside the London Committee and its organs would in the present situation result not only in not diminishing, but in increasing, the possibility of misunderstandings and complications and in retarding, instead of hastening, the attainment of the general agreement, an agreement which the Fascist Government regard as supremely necessary.

The Fascist Government are, therefore, of the opinion that the question of non-intervention should continue to be dealt with at the London Committee.

The Fascist Government have finally the honour to state that they will not participate in conversations, meetings or conferences to which the German Government have not been formally invited and in which they do not participate.

5. PLAN FOR WITHDRAWAL OF VOLUNTEERS FROM SPAIN ADOPTED BY THE NON-INTERVENTION SUB-COMMITTEE WITH THE ABSTENTION OF THE SOVIET UNION, NOVEMBER 4, 1937<sup>5</sup>

The Representatives on the Sub-Committee have agreed to accept all the nine points of the United Kingdom Government's plan of July 14, 1937, dealing with the withdrawal of volunteers, the grant of belligerent rights and the problem of control, with such additional measures as may be deemed necessary to render the control fully effective, special account being taken of the proposals in this connection contained in the van Dulm-Hemming Report.

The Representatives on the Sub-Committee have further agreed:

1. That the Chairman should be authorised to approach forthwith the

<sup>5</sup> *London Times*, Oct. 30, 1937.

authorities in both parts of Spain with a view to securing their concurrence at the earliest possible date in the following proposals:

(a) that the authorities in each part of Spain should agree to co-operate in the withdrawal, under international supervision, of all persons engaged in the present conflict who are of non-Spanish nationality or who were of non-Spanish nationality at its outbreak in July, 1936, as defined in the Eighth Report of Technical Advisory Sub-Committee No. 3;

(b) that two Commissions should be appointed, one being sent to each party in Spain, in order:

- (I) in conjunction with the appropriate Spanish authorities to estimate the total number of non-Spanish nationals, as defined in (a) above, to be withdrawn and to report as rapidly as possible to the Non-Intervention Committee the result of their inquiry;
- (II) to concert arrangements with the appropriate Spanish authorities, in accordance with the principles laid down in the Report of the Technical Advisory Sub-Committee referred to in (a) above, for the withdrawal from Spain of non-Spanish nationals as defined in that report;
- (III) to carry out in the manner determined by the Non-Intervention Committee the withdrawal from both sides in Spain in accordance with the proportions of the numbers of non-Spanish nationals serving on each side.

(Arrangements should be made for the nomination by the Non-Intervention Committee at the earliest possible moment of the persons of whom the two Commissions will be composed, and an immediate start should be made in the drafting of the terms of reference and general instructions to be given to the two Commissions.)

2. That in seeking the concurrence of the authorities in both parts of Spain to the proposals contained in paragraph 1 above, the chairman should inform them that each of the participating Governments will grant belligerent rights to the two parties in Spain to the extent, and on the conditions, laid down in paragraphs 3 and 8(iii) of the plan proposed by the United Kingdom Government on July 14, 1937;

(Arrangements should be made for the appointment of a Technical Advisory Sub-Committee to advise on all the questions arising from the execution of paragraphs 3 and 8(iii) of the United Kingdom Government's plan of July 14 last, relating to the grant of belligerent rights to the two parties in Spain.)

3. That, as from a date to be determined by the Non-Intervention Committee and which should shortly precede the commencement of the withdrawal of non-Spanish nationals from Spain, observation on the Franco-Spanish and Portuguese-Spanish frontiers should be restored and strengthened simultaneously with the adoption of measures to strengthen the sea

observation scheme in the manner indicated in the preamble to the present resolution;

4. That each of the participating Governments should reaffirm its existing engagements not to permit the dispatch from, or the transit through or over, its territories of arms or of war material covered by the Non-Intervention Agreements, or of non-Spanish nationals proposing to proceed to Spain for the purpose of taking part in the present conflict.

This original Resolution, drawn up October 29th, was revised by the Committee at its meeting on November 2nd, with the following alterations introduced:<sup>6</sup>

(a) That the Chairman should be authorised to approach forthwith the two parties in Spain, with the object of obtaining their agreement to the Resolution as a whole; and that in so doing he should make clear to them the attitude and intention of the various Governments in regard to the several parts of the Resolution; and

(b) That, pending the receipt of the replies from the two parties in Spain, the Sub-Committee should continue to examine the concrete questions arising out of the execution of the several parts of the Resolution and, further, that an examination should be undertaken of the question of what practical measures may be required to meet the situation arising out of the fact that one Government have abstained from accepting the provisions in the Resolution relating to belligerent rights; and that the result of this examination should be made available to the International Committee, so that agreement on this, as well as on other matters, may be reached, to enable the Plan to be put into operation as soon as possible and, as a first step, to enable the two Commissions to be sent to Spain.

#### 6. REPLY OF THE SPANISH GOVERNMENT TO THE PLAN FOR THE WITHDRAWAL OF VOLUNTEERS, DECEMBER 1, 1937<sup>7</sup>

##### *(Translation)*

1. The British note commences with these words: "The International Committee of Non-Intervention has decided to accept the nine points of the Plan of the Government of the United Kingdom, dated July 14, 1937, relative to the withdrawal of volunteers, to the concession of belligerent rights, to the problem of control with such additional measures as shall be deemed necessary to render the control fully effective and taking account especially of the provisions on this matter contained in the van Dulm-Hemming Report." The Spanish Government has received by the same channel, some time after the note, two other complementary documents which are to be considered as essential with regard to the accords which have been notified.

2. Then in paragraph number 1 it is demanded of us that we co-operate in the withdrawal of all persons who are participating in the actual conflict

<sup>6</sup> London *Times*, Nov. 3, 1937.

<sup>7</sup> Text in French in *Le Temps*, Dec. 4, 1937.

and who are not of Spanish nationality, or who had not acquired that nationality in July, 1936, and the nomination of commissions charged with realizing in Spain the preparatory work for this withdrawal is announced.

3. The Spanish Government, which has already proposed some months ago the withdrawal of foreign combatants, maintains with firmness this point of view by which it shows itself to be very disposed to accept the effecting of such an action under international control, and it is entirely disposed to accept the intervention of the commissions mentioned above. But, it considers certain clarifications indispensable in order to know in a concrete way the meaning of the arrangement to which it is invited to accede.

These clarifications it is advisable to furnish not only as to the composition of the said commissions, in order to avoid challenges which might easily arise, and as to their functions, in order that we may not find ourselves then in the presence of rules which might be an obstacle to our intentions to give to the subject of the problems that the Non-Intervention Committee has linked improperly to that of the withdrawal of foreign combatants.

4. The British Plan of July 14th, in its first paragraph, maintains that the control of the traffic arriving in Spain by the sea, presupposes in paragraph B, "the suspension of the naval patrols, and their replacement by the installation, with the consent of the two parties, of international officers in the Spanish ports with the necessary guarantees."

5. On the contrary, among the van Dulm-Hemming propositions which follow the note to which we are replying, and on which one must take special account on this point, in figure one—paragraph 287—which rejects the system advocated in the British Plan in stating on this question that: "For the reasons which are set forth in our report, we consider the introduction of such a system as hardly necessary [*très peu indiquée*], and we believe that it would be not only very expensive and very difficult to apply, but even completely useless."

On the matter of such a clear contradiction it is necessary at the outset to emphasize that the Non-Intervention Committee announces regarding the control its intention of adopting "the additional measures which shall be judged necessary," measures the nature and extent of which have not been made the object of any precision.

It seems elementary that the Spanish Government should know beforehand, especially in taking account of the direction which it is wished to give to the control they claim to exercise on our own territory, whether the system proposed is that of the British Plan of July 14, or whether such a system is to be considered as rejected by the van Dulm-Hemming Report which the Committee has indicated as being the basis of its accords and which is of a later date—August 20th—and finally, what the "additional measures" consist of.

The Committee establishes that the withdrawal of non-Spanish combatants shall be effected by instalments, in proportion to the number of these combatants which there are on each side. But it says nothing (and it wishes

to clarify this point) as to the question of whether this proportionality is to be simply numerical or whether in addition it will be in relation to the different categories which are found among these non-Spaniards both in the Government forces and in those of the rebels.

6. The Spanish Government expresses its profound astonishment in seeing that in the report on the withdrawal of foreign combatants the London Committee has not considered as such the subjects of the Sultan of Morocco residing in the zone of the Spanish Protectorate of that empire, and it wishes to know the bases of such a definition, which, beside being inconsistent with the care of giving the greatest breadth to the withdrawal of non-Spanish combatants, is in open opposition to the Constitution of the Republic and in flagrant disagreement with the international conventions which, commencing with the Act of Algeciras, are subscribed to by States which are represented on the Non-Intervention Committee, fixing the status of the said country.

7. Paragraph 3 of the note of November says: "that beginning with a date which will be determined by the Non-Intervention Committee and which must precede by a very little the commencement of the withdrawal of non-Spaniards from Spain, there will be re-established and rendered more effective the surveillance of the frontiers including both the Franco-Spanish and the Spanish-Portuguese frontiers, and, at the same time, measures will be adopted with a view to rendering more effective the plan of maritime observation, as is indicated in the preamble to the present accord."

8. We have already seen that the preamble cites as one of the bases of the solution of the Committee the British Plan of July 14. But, paragraph 8 of this Plan, in fixing the stages, indicates as the first stage the installation of observing officers in the Spanish ports, and as the second stage the nomination of the commissions which will organize and oversee the withdrawal of foreigners.

Consequently, it is necessary to clarify what is the proposition which truly exists: that defined by the Committee, and in virtue of which the re-establishment of frontier and maritime control will take place after the nomination of the commissions, or that established in the British Plan which determines that the restoration of the system of control precedes the nomination of the commissions.

Finally, the Spanish Government considers a clarification to be necessary on the resolution of the international committee by which the President of the said committee is authorized to address the Spanish Government as well as the rebels, in order to obtain their adhesion to "the accord as a whole." It is necessary to know, in a manner which can leave no doubt, whether such an accord deals exclusively with the withdrawal of persons of non-Spanish nationality who are participating in the struggle, or also with the other problems of the recognition of certain rights of belligerents and of the re-establishment of the land and maritime control which seem improperly linked to the first part.



7. TEXT OF THE RESOLUTION REAFFIRMING AND EXTENDING THE NON-INTERVENTION AGREEMENT, AND PROVIDING FOR THE WITHDRAWAL OF FOREIGN VOLUNTEERS FROM SPAIN, FOR THE GRANT IN CERTAIN CIRCUMSTANCES OF BELLIGERENT RIGHTS TO THE TWO PARTIES IN SPAIN, AND FOR THE OBSERVATION OF THE SPANISH FRONTIERS BY LAND AND SEA, ADOPTED BY THE NON-INTERVENTION COMMITTEE JULY 5, 1938, FOR TRANSMISSION TO THE TWO PARTIES IN SPAIN FOR THEIR APPROVAL <sup>8</sup>

The Governments represented on the International Committee for the Application of the Agreement regarding Non-Intervention in Spain, having approved the resolution passed on the 16th February, 1937, by the Committee to the effect that the Agreement should be extended as from midnight the 20th–21st February, 1937, to cover the recruitment in the transit through, or the departure from, their respective countries of persons of the nationality of their respective countries, proposing to proceed to Spain, the Spanish Possessions or the Spanish Zone of Morocco for the purpose of taking part in the present conflict; and

(2) having deemed it expedient to establish a system of observation round the frontiers of Spain, the Spanish Possessions and the Spanish Zone of Morocco for the purpose of ascertaining whether the Agreement is being observed; His Majesty's Government in the United Kingdom having accepted an invitation by the Portuguese Government to observe the carrying out of the Agreement in Portugal, and for this purpose to appoint British observers to be attached to His Majesty's Embassy in Lisbon; His Majesty's Government in the United Kingdom, having informed the Committee that they were satisfied that the agreement reached between them and the Portuguese Government as a result of this invitation was fully adequate from every point of view to enable His Majesty's Government to discharge the responsibilities which they had agreed to assume, and that they would communicate to the International Committee any information which might be reported to them by His Majesty's Ambassador at Lisbon regarding infringements of the Non-Intervention Agreement; the Committee being fully confident in the discharge by His Majesty's Government in the United Kingdom of these responsibilities in regard to the Portuguese frontier, in collaboration with the Portuguese Government, having adopted, on the 8th March, 1937, a Resolution in which, on behalf of the Governments represented thereon they agreed that a system of observation should be carried out on the Franco-Spanish frontier, the frontier between Spain and Gibraltar, and the maritime frontiers of Spain, the Spanish Possessions, and the Spanish Zone in Morocco, in the manner indicated in the Annex attached thereto;

(3) the Governments parties to the Non-Intervention Agreement having now deemed it expedient:

- (i) to reaffirm the obligations entered into under the said Agreement, including those in regard—

<sup>8</sup> *British Parliamentary Paper*, Spain No. 1 (1938), Cmd. 5793.

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- (a) to the export of arms and war material to Spain, severally entered into by them in their exchange of notes with the French Government in August and September, 1936, as the case may be, and
- (b) to the departure from, and the transit through, their respective countries of foreign volunteers proposing to take service in the present conflict in Spain, entered into on their behalf by the International Committee on the 16th February, 1937; and
- (ii) to extend the obligations under sub-section (i) (b) above to cover also the departure from, and the transit through, their respective countries of persons whose activities in Spain would be in any way susceptible of prolonging or embittering the present conflict; and
- (iii) to ensure the application of all the nine points of the United Kingdom Government's plan of the 14th July, 1937,\* dealing with the withdrawal of foreign volunteers, the grant of belligerent rights and the problem of control, with such additional measures as may be deemed necessary to render the control fully effective, special account being taken of the proposals in this connection contained in the van Dulm-Hemming Report, and therefore—
  - (a) to secure the withdrawal from Spain of foreign volunteers engaged either directly or indirectly in the present conflict, and of nationals of the participating countries whose activities in Spain would be in any way susceptible of prolonging or embittering the present conflict; and
  - (β) to recognise in certain circumstances that the two parties in Spain possess a status which would justify them in exercising belligerent rights at sea; and
  - (γ) to reaffirm and put into operation the plan for the observation of the Spanish frontiers by land and sea set out in the Annex to the Resolution of the 8th March, 1937, subject to certain amendments and additions now incorporated with the object of strengthening and extending the said plan; and
- (iv) to extend their existing obligations by prohibiting the carriage from any port to Spanish ports by ships having the right to fly the flags of their respective countries of arms or war material, the export of which to Spain is prohibited under the Non-Intervention Agreement;
- (4) the Committee agree on behalf of the Governments represented thereon that effect to the objects set out in paragraph (3) above shall be secured in the manner indicated in the Annex attached hereto, and that the

\* Cmd. 5521.

several parts of the plan prescribed therein shall remain in force until the said objects have been attained or until the plan is otherwise amended or determined.

## ANNEX

PART I. REAFFIRMATION OF THE NON-INTERVENTION AGREEMENT OF AUGUST, 1936, AND OF THE AGREEMENT SUPPLEMENTARY THERETO ADOPTED BY THE INTERNATIONAL COMMITTEE ON FEBRUARY 16, 1937, ON BEHALF OF THE GOVERNMENTS PARTIES TO THE SAID AGREEMENT

I. REAFFIRMATION OF THE AGREEMENT OF AUGUST, 1936, REGARDING NON-INTERVENTION IN SPAIN

1. The Governments of Albania, Belgium, the United Kingdom, Bulgaria, Czechoslovakia, Denmark, Eire, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxemburg, The Netherlands, Norway, Poland, Portugal, Roumania, Sweden, Turkey, U.S.S.R. and Yugoslavia (hereinafter referred to as the "participating Governments") having authorised their respective representatives on the International Committee for the Application of the Agreement regarding Non-Intervention in Spain (hereinafter referred to as the "International Committee" and the "Non-Intervention Agreement" respectively) explicitly to reaffirm on their behalf all the engagements entered into by them by the exchange of Notes in August and September, 1936, which constitute the said Agreement, the International Committee take note that, on the occasion of the adoption of the Resolution of which the present document forms an Annex, each of the participating Governments explicitly reaffirms all the obligations entered into by it in 1936 under the said Agreement, including the prohibition of the export direct or indirect, the re-exportation and the transit to Spain, to the Spanish Possessions, or to the Spanish Zone of Morocco, of all arms, munitions, and war material, including aircraft, assembled or dismantled, and of all ships of war.

2. The arms and war material, the export of which from, and the transit of which through, the countries, the Governments of which are parties to the Non-Intervention Agreement, is prohibited under the Agreement, are the following :

Category (1). Rifles and carbines (excluding sporting arms).

Category (2). Bayonets, swords and lances (*armes blanches*).

Category (3). Machine guns, automatic rifles and machine-pistols of all calibres and their mountings.

Category (4). Revolvers and automatic pistols, with calibres exceeding 3 mm.

Category (5). Guns, howitzers and mortars of all calibres, and their mountings.

Category (6). Ammunition for the arms enumerated under Categories (1), (3) and (4) above; filled or unfilled projectiles for arms enumerated in Category (5) above.

- Category (7). Grenades, bombs, torpedoes and mines filled or unfilled, and apparatus for their use or discharge.
- Category (8). Tanks and armoured vehicles.
- Category (9). Flame-throwers and all other projectiles used for chemical or incendiary warfare.
- Category (10). Special carriages for machine guns, limbers, artillery wagons and military pack-saddlery.
- Category (11). Mustard gas (dichlorethyl sulphide); Lewisite (chlorvinylchlorarsine and dichlordivinylchlorarsine); Methylchlorarsine; diphenylchlorarsine; Diphenylcyanarsine; Diphenylaminechlorarsine; Phenylchlorarsine; Ethylchlorarsine; Phenyltribromarsine; Ethyltribromarsine; Monochlormethylchlorformate; Trichlormethylchlorformate (diphosgene); Dichlorodimethyl ether; Dibromodimethyl ether; Cyanogen chloride; Ethyl Bromacetate; Ethyl iodacetate; Brombenzylcyanide; Bromacetone; Brom-methylethyl ketone; Chlorpicrin; Phosgene; Arsenic trichloride; Brombenzyl iodide; Iodacetone; Acrolein.
- Category (12). Explosives of all kinds, not being explosives certified by the consignor as destined solely for civilian use and exported under licence from the Government of the country from which they are exported.
- Category (13). Aircraft, assembled or dismantled, and aero-engines, propellers or airscrews, fuselages, aerial gun-mounts and frames, hulls, tail units and under-carriage units.
- Category (14). Vessels of war of all kinds, including aircraft-carriers and submarines.
- Category (15). Component and spare parts of arms and munitions enumerated in Categories (1)–(9) above.

II. REAFFIRMATION OF THE SUPPLEMENTARY AGREEMENT OF FEBRUARY 16, 1937, EXTENDING THE NON-INTERVENTION AGREEMENT TO PROHIBIT THE DEPARTURE, &C., FOR SPAIN OF FOREIGN VOLUNTEERS

3. The representatives on the International Committee having on the 16th February, 1937, agreed on behalf of their respective Governments to an extension of the Non-Intervention Agreement to prohibit also, as from midnight the 20th/21st February, 1937, nationals of their respective countries from taking service as foreign volunteers in the present Spanish conflict, the said representatives on behalf of their respective Governments now reaffirm all the engagements then entered into by their respective Governments, namely, that the Non-Intervention Agreement should be extended to prohibit the recruitment in, the transit through, and the departure from, every country the Government of which is a party to the said Agreement of persons of non-Spanish nationality (other than persons of Swiss nationality or of non-European nationality) proposing to proceed to Spain, to the Spanish

Possessions, or to the Spanish Zone in Morocco for the purpose of taking service in the present conflict.

4. Under the Agreement reaffirmed in paragraph 3 above, the participating Governments agree to scrutinise applications received from nationals of their respective countries for authority to pass through Spain in transit from one European country to another with the same degree of care as that applied to applications from such nationals for authority to visit Spain.

PART 2. THE EXTENSION OF THE NON-INTERVENTION AGREEMENT TO PROHIBIT THE DEPARTURE, &C., FOR SPAIN OF PERSONS WHOSE ACTIVITIES IN THAT COUNTRY WOULD BE IN ANY WAY SUSCEPTIBLE OF PROLONGING OR EMBITTERING THE PRESENT CONFLICT

5. Having deemed it expedient that the Supplementary Agreement, dated the 16th February, 1937, reaffirmed in paragraph 3 above, prohibiting the nationals of the countries the Governments of which are parties to the Non-Intervention Agreement from taking service as foreign volunteers in the present Spanish conflict, should be extended to cover also the case of persons, in respect of whom there are reasonable grounds for believing that if they were permitted to proceed to Spain, they would engage in activities susceptible of prolonging or embittering the present conflict on behalf of one or other of the Spanish parties, that is to say, in some form of propaganda for one or other of the Spanish parties, or in some activity repugnant to the intention and spirit of the Non-Intervention Agreement, the participating Governments agree that, as from the date indicated in paragraph 187 below, they will take all practicable measures to prevent the departure from, or transit through, their respective territories to Spain, the Spanish Possessions, or the Spanish Zone in Morocco, of their nationals whom there are reasonable grounds for regarding as falling within either of the categories set out above.

6. In order to give effect to the Agreement set out in paragraph 5 above, the participating Governments will issue all necessary instructions to the appropriate authorities in their respective countries not to issue passports or equivalent documents or to validate passports or equivalent documents for Spain, the Spanish Possessions, or the Spanish Zone in Morocco to any person:

- (a) who proposes to engage, either directly or indirectly, in the present conflict, as defined in paragraph 55(a) to 55(f) below;
- (b) who has not given in writing an undertaking (which the Government concerned will be under an obligation to satisfy itself is given in good faith)—
  - (i) not to engage, either directly or indirectly, in the present conflict, as defined in paragraph 55(a) to 55(f) below, and
  - (ii) to abstain, while in Spanish territory, from engaging in any propaganda for either Spanish party, or in any activity

in any way repugnant to the intention and spirit of the Non-Intervention Agreement;

- (c) who proposes to take up, in Spain, an appointment, the previous holder of which has been or is in process of being evacuated from Spain under the withdrawal plan set out in Part 4 below, on the ground that such employment necessarily involves a breach of the Non-Intervention Agreement of August, 1936, as supplemented by the Resolution adopted by the International Committee on the 16th February, 1937;
- (d) who has already been evacuated from Spain under the withdrawal plan by reason of having been engaged, either directly or indirectly, in the present conflict;
- (e) who is known to have violated, in the course of a previous journey to Spain, the undertaking referred to in (b) above, not to engage, either directly or indirectly, in the present conflict, and to abstain, while in Spanish territory, from engaging in any propaganda for either Spanish party, or in any activity in any way repugnant to the intention and spirit of the Non-Intervention Agreement.

PART 3. THE EXTENSION OF THE NON-INTERVENTION AGREEMENT TO PROHIBIT THE CARRIAGE FROM ANY PORT TO SPANISH PORTS BY SHIPS OF THE PARTICIPATING COUNTRIES OF ARMS OR WAR MATERIAL INCLUDED IN THE PROHIBITED LIST

7. Having deemed it expedient on the 8th March, 1937, to institute a system of observation over the Spanish frontiers by land and sea, by which, *inter alia*, it was agreed that ships having the right to fly the flags of the countries the Governments of which are parties to the Non-Intervention Agreement should be placed under an obligation to embark Observing Officers before proceeding to Spanish ports, and having in Part 6 of the present Annex reaffirmed and extended the said system of observation, the participating Governments agree to an extension of the Non-Intervention Agreement prohibiting ships having the right to fly the flags of their respective countries from carrying from any port to Spanish ports arms or war material the export of which to Spain is prohibited under the Non-Intervention Agreement.

8. In order to give effect to the agreement set out in paragraph 7 above, the participating Governments, in so far as they have not already done so, will take such steps (whether legislative or other) as may be necessary to prohibit, as from the date indicated in paragraph 188 below, the carriage from any port to Spanish ports of arms or war material, falling within the categories set out in paragraph 2 above, by ships having the right to fly the flags of their respective countries.

PART 4. THE WITHDRAWAL FROM SPAIN OF FOREIGN VOLUNTEERS ENGAGED EITHER DIRECTLY OR INDIRECTLY IN THE PRESENT CONFLICT

I. THE ORGANISATION OF THE SYSTEM OF WITHDRAWAL

(a) *The Duties Entrusted to the International Board for Non-Intervention in Spain*

9. The withdrawal from Spain of foreign volunteers will be carried out in the manner prescribed in paragraphs 14 to 70 below on behalf of the participating Governments by the "International Board for Non-Intervention in Spain" (hereinafter referred to as the "Board"), established for the purpose of operating the scheme for the observation of the Spanish frontiers by land and sea under paragraph 1 of the Annex to the Resolution adopted by the International Committee on the 8th March, 1937. The duties required to be discharged in Spain will be entrusted to two Commissions, attached respectively to the Headquarters of the two Spanish parties. The main outlines of these duties are set out in paragraphs 23 to 48 below, and further precision will be given thereto in the General Instructions referred to in paragraph 23 below, which will be issued to each Commission by the Board, before the withdrawal plan is set in operation. All further instructions which may be necessary, including all instructions necessary to secure due financial control, will be given to the Commissions by the Board, as occasion arises. Each Commission will work in the closest relation with the Board, and the Board will keep each Commission fully informed of the progress of the plan in the other portion of Spain. The Commissions, however, will not be in direct relations with one another.

(b) *The Composition of the Board*

10. As from the date of the adoption of the Resolution to which the present document forms an Annex, the Board will be constituted as follows:

- (i) Chairman (Vice-Admiral van Dulm);
- (ii) Representatives of the following nine countries—

United Kingdom,	Norway,
France,	Poland,
Germany,	Portugal,
Greece,	U.S.S.R.;
Italy,	

- (iii) Secretary (Mr. Francis Hemming).

(c) *The Relations Between the Board and the International Council for Non-Intervention in Spain*

11. All contracts (including contracts of service) and other obligations of a financial character which it will be necessary to enter into or incur, as the case may be, to give effect to decisions of the Board will be incurred on their behalf by the Company registered under United Kingdom law on the

20th April, 1937, under the title "International Council for Non-Intervention in Spain," in which body will be vested the funds provided by the participating Governments for the operation of the plan.

(d) *The Composition of the Commissions to be Sent to Spain*

12. Each of the Commissions, referred to in paragraph 9 above, will consist of three persons appointed by the unanimous vote of the International Committee. The members of each Commission will select one of their number to act as their Chairman.

13. Of the two Commissions referred to in paragraph 12 above, one will be responsible to the Board for the evacuation from Spain of foreign volunteers as defined in paragraph 49 below, from one portion of Spain (including any Spanish Possession or Dependency in the control of the Spanish party concerned), and the other Commission for the corresponding withdrawal from the other portion of Spain (including any Spanish Possession or Dependency in the control of the Spanish party concerned). As regards the Spanish Possessions and Dependencies, &c., there will be constituted, in the manner prescribed in paragraph 59 below, establishments to be known as "Branch Establishments," each of which will act under the Commission concerned, in respect of the Possession, Dependency, &c., in question.

II. THE METHOD AND TIME-TABLE IN ACCORDANCE WITH WHICH THE WITHDRAWAL OF FOREIGN VOLUNTEERS FROM SPAIN WILL BE CARRIED OUT

14. The foreign volunteers in Spain will be transferred to Evacuation Areas (which will be established at points situated outside, but in the vicinity of, the ports of Palamos, Carthagena, Malaga, and Cadiz) at a steady rate of not less than 2,000 men per day. That is to say, if the numbers of foreign volunteers serving with the two Spanish parties are equal, each Spanish party will each day hand over 1,000 foreign volunteers to the Commission concerned, 500 being transferred to each of the two Evacuation Areas which will be established in the portion of Spain concerned. If, on the other hand, the reports (Report "A") of the Commissions (referred to in paragraph 25(c) below) show that there is a larger number of foreign volunteers serving with one Spanish party than with the other, the numbers of foreign volunteers to be handed over daily by each Spanish party will be as follows:

- (a) by the Spanish party with which the smaller number of foreign volunteers are serving, 1,000 foreign volunteers (500 to each Evacuation Area);
- (b) by the Spanish party with which the larger number of foreign volunteers are serving, such number in excess of 1,000 foreign volunteers as will make the number of foreign volunteers to be handed over daily by that Spanish party stand to the 1,000 foreign volunteers to be handed over daily by the other Spanish party in the same proportion as do the total numbers of foreign volunteers serving on each side.



NOTE.—The effect of the above provision is that if the total number of foreign volunteers serving with Spanish party "A" were in the proportion of 2 : 1 to those serving with Spanish party "B," the number of foreign volunteers to be handed over daily would be as follows—

(a) by Spanish party "A," 2,000 foreign volunteers;

(b) by Spanish party "B," 1,000 foreign volunteers.

15. In order to enable the withdrawal of foreign volunteers to be carried out at the daily rate indicated in paragraph 14 above, each Spanish party will undertake, as a condition to the adoption of the plan set out in the present document:

- (a) to take all steps that may be necessary, both during the period when the Commissions are ascertaining the total number of foreign volunteers to be withdrawn and subsequently, to ensure that, on the day on which the actual withdrawal of foreign volunteers starts and on every day thereafter until all the foreign volunteers have been withdrawn from both Spanish parties, they will be in a position to hand over daily the number of foreign volunteers prescribed in paragraph 14 above; and for this purpose to undertake that on the day on which the actual withdrawal starts and on each subsequent day thereafter, there shall be not less than five days' quotas of foreign volunteers already withdrawn from the battle area and available for transfer to the Evacuation Areas.
- (b) to hand over daily foreign volunteers to the Commandants of the Evacuation Areas on behalf of the Commissions in the numbers and in the manner prescribed above, such transfers to be effected each day between dawn and sunset.

16. For the purpose of the plan, the rate at which foreign volunteers are handed over by the two Spanish parties will be deemed to be the rate at which the withdrawal operation is carried out. Once therefore foreign volunteers have been transferred to an Evacuation Area, they will be available to be evacuated from Spain immediately arrangements can be made for their transport by sea (and later in some cases by land) to the countries to which they are respectively to be repatriated.

17. The first parties of foreign volunteers (*i.e.*, the first of the daily quotas prescribed in paragraph 14 above) will be transferred by the Spanish parties concerned to the Evacuation Areas on the forty-sixth day after the final adoption by the International Committee of the Resolution of which the present document forms an Annex; and on each subsequent day, the Spanish parties will transfer to the Evacuation Areas the daily quota prescribed in paragraph 14 above until the withdrawal of the foreign volunteers who are neither sick nor wounded nor prisoners of war has been completed.

18. The first parties of foreign volunteers, which will be equal in size to the daily quota prescribed in paragraph 14 above, will be transferred from

the Evacuation Areas and embarked on transports chartered by the Board on the fifty-first day after the final adoption of the Resolution referred to in paragraph 17 above. On each subsequent day thereafter similar daily quotas of foreign volunteers will be embarked for repatriation to their respective countries.

19. On the hundred and first day from the final adoption of the Resolution referred to in paragraph 17 above or on such earlier day as the withdrawal of foreign volunteers who are neither sick nor wounded nor prisoners of war may have been completed, the Spanish parties concerned will begin the transfer to the Evacuation Areas of sick and wounded and prisoners of war, finally of any women foreign volunteers, in daily quotas to be agreed upon between the Commissions and the Spanish parties concerned. The transfer to the Evacuation Areas of foreign volunteers falling within these classes will be carried out as rapidly as possible and will be completed not later than the hundred and thirty-fifth day after the final adoption of the Resolution referred to in paragraph 17 above.

20. On the hundred and first day the Commission will begin the task prescribed in paragraph 48 below of verifying that no foreign volunteers remain unevacuated, and the Commissions will submit to the Board for the International Committee their reports of verification not later than the hundred and forty-ninth day after the final adoption of the Resolution referred to in paragraph 17 above.

21. As soon as possible after the International Committee have signified their acceptance of the final Reports of the Commissions prescribed in paragraph 20 above, the headquarters of the Commissions, the Evacuation Areas, and the Branch Establishments will be closed and the International Staff withdrawn from Spain.

22. The time-table laid down in the preceding paragraphs for the withdrawal from Spain of foreign volunteers can therefore be summarised in tabular form as follows:

	<i>Period (in days) Calculated from "Zero" Date</i>
Final adoption by the International Committee of the Resolution regarding the withdrawal plan.....	Zero date
Period required for (a) the Commissions (including officers in charge of Branch Establishments) to go to Spain and to prepare their reports and for the International Committee to approve their reports, and simultaneously therewith for (b) the Board to bring into existence the Evacuation Areas and the machinery required to carry through the withdrawal operation (45 days).....	1st to 45th days
The first daily quota of foreign volunteers is drafted into the Evacuation Areas.....	46th day

	<i>Period (in days) Calculated from "Zero" Date</i>
The first drafts of foreign volunteers leave the Evacuation Areas and are embarked on the Board's transports <i>en route</i> for home.....	51st day
The day by which the evacuation of foreign volunteers (other than sick and wounded and prisoners of war) is to be completed (the fiftieth day from the embarkation of the first draft).....	100th day
Period required for the transfer from the Evacuation Areas of sick and wounded foreign volunteers and prisoners of war and all women foreign volunteers (35 days).....	101st to 135th days
Final date for the closing of the Evacuation Areas and reduction of camp staff to a care and maintenance party, the remainder of the staff being transferred to Third Echelons, France and Gibraltar for disbandment (7 days).....	142nd day
Date of closing of the three Branch Establishments (Spanish Possessions and Dependencies) and transfer of staff to Third Echelons, France and Gibraltar for disbandment.....	147th day
Period required by the Commissions in which to verify that no foreign volunteers remain unevacuated and to prepare their final reports (49 days).....	101st to 149th days
The Commissions withdraw to Third Echelons, France and Gibraltar.....	150th day
Consideration of final reports of the Commissions by the International Committee and decision that the scheme has been fully carried out (6 days).....	151st to 156th days
Disbandment of the Commissions.....	157th day
Disbandment of Third Echelons, France and Gibraltar, and completion of the withdrawal operation..	164th day

### III. THE FUNCTIONS OF, AND THE PROCEDURE TO BE FOLLOWED BY, THE TWO COMMISSIONS TO BE SENT TO SPAIN

23. The members of each Commission will proceed to London immediately on their appointment for the purpose of conferring with one another and with the Bureau of the Board, of selecting their chairman, and of receiving the General Instructions which will be issued for their guidance in their work. These General Instructions will be prepared by the Board, and will be submitted by the Board to the International Committee, by whom they will be approved at the same time as the Resolution to which the present document forms an annex is finally adopted.

24. All necessary arrangements will be made by the Board to ensure that the members of the Commissions, accompanied by the members of their staffs and by the principal officers and their staffs, to be employed in each of the Evacuation Areas and by the principal officers to be employed in Branch Establishments to proceed to the portion of Spain concerned immediately upon the final adoption by the International Committee of the Resolution of which the present document forms an Annex. These first parties to proceed to Spain will include the officers shown below:

(a) *Headquarters of each Commission—*

3 Commissioners.

1 Secretary and Financial Adviser to the Commission.

4 (or more) General Staff Officers (including officers in charge of Branch Establishments).

3 Adjutant Interpreters and subordinate clerical staff.

(b) *Staff in respect of each Evacuation Area—*

1 Camp Commandant.

1 Secretary to Camp Commandant.

1 Chief Medical Officer.

1 Chief Engineer.

1 Chief Paymaster and Chief Supply Officer.

1 Assistant Accounts Officer.

2 Divisional Officers.

1 Port Staff Officer (to be in charge of unloading of stores, &c., at Spanish port concerned, and subsequently of embarkation of foreign volunteers).

25. On arrival at their posts in Spain, each Commission will carry out the following duties:

(a) Each Commission will at once proceed, in conjunction with the appropriate Spanish Authorities, to form an estimate of the total number of foreign volunteers, as defined in paragraphs 49 to 52 below, who are to be withdrawn from Spain.

(b) Separate estimates will be made by each Commission of the number of foreign volunteers to be evacuated from the portion of Spain concerned falling in the following classes—

(i) Navy.

(ii) Army.

(iii) Air Force.

(iv) Civilians.

(c) Immediately each Commission has completed its estimate of the total number of foreign volunteers to be withdrawn in accordance with (a) and (b) above, it will prepare a report (Report A) addressed to the Board setting out its conclusion as regards the port of Spain with which it is concerned.

(d) Concurrently with the discharge of the functions set out in (a) above, each Commission will concert arrangements with the ap-

propriate Spanish Authorities for the withdrawal from Spanish territory of foreign volunteers, as defined in paragraphs 49 to 53 below.

26. On arrival at their several posts the officers in charge of Branch Establishments will obtain in respect of the Possession, Dependency, &c., in question information in regard to the numbers and categories of foreign volunteers to be withdrawn in the manner laid down for the metropolitan area of Spain in paragraph 25(a) and (b) above, and will immediately report thereon to the Commission concerned.

27. Immediately on the arrival of each Commission and the officers in charge of each Branch Establishment at their posts, the Spanish party concerned will attach to the Commission or officer in charge of the Branch Establishment, as the case may be, an army officer of field rank (*i.e.*, an officer not below the rank of Major or Commandant), and in the discharge of the duties prescribed in paragraphs 25 and 26 above the Commission and the officer in charge of each Branch Establishment, as the case may be, will make full use of the Spanish liaison officer so appointed.

28. As soon after their arrival in Spain as the progress of their work permits, each Commission will submit a report to the Board (Report "B") in which they will state the date on which they will be in a position to start the actual counting of the foreign volunteers, in the portion of Spain with which they are concerned, it being understood that this date may be expected to be about 15 days after the date of the final adoption of the Resolution to which the present document forms an Annex.

29. Each Commission when submitting the report referred to in paragraph 25(c) above (Report "A") will attach thereto the following documents:

- (a) statistical and other reports prepared for them by the General Staff Officers on its staff by whom the detailed investigations necessary to provide the data in regard to the numbers and classes of foreign volunteers have been prepared;
- (b) the report of each officer in charge of a Branch Establishment under their orders.

30. In preparing the reports referred to in paragraph 25(c) and 29 above (Report "A") the Commissions will not specify the nationality of the persons to be withdrawn from the portion of Spain concerned, but each Commission will at the same time prepare a separate Report (Report "C") containing an estimate of the numbers of foreign volunteers to be evacuated to each of the participating countries under the provisions of paragraph 60 below. Report "C" referred to above will be submitted by the Commissions concerned to the Secretary of the Board for his personal guidance in arranging the necessary sea transport for the evacuation from Spain of the persons concerned in the manner indicated in paragraphs 71 to 76.

31. Concurrently with the submission of the reports referred to in paragraphs 25(c) and 30 above, each Commission will submit to the Board a

report (Report "D") containing an estimate, as regards the part of Spain with which it is concerned, including any Spanish Possession or Dependency, of the number (i) of foreign volunteers in hospital under treatment for wounds or sickness and (ii) of foreign volunteers held as prisoners of war, and (iii) of any women foreign volunteers.

32. Each Commission immediately on its arrival will arrange with the Spanish party concerned for technical officers on its staff to visit the ports near which the Evacuation Areas in the portion of Spain concerned are to be established and in conjunction with the Spanish Authorities to determine the precise site to be selected for the said Evacuation Areas. The considerations to be borne in mind in selecting these sites will be indicated in the General Instructions. Immediately these sites have been finally selected, the Commission concerned will make a separate report (Report "E") to the Board.

33. Each Commission will obtain particulars from the Spanish party concerned, regarding any foreign volunteers who may be serving terms of imprisonment in military or other prisons in the portion of Spain concerned, and will submit to the Board (for the information of the International Committee) a report (Report "F") giving (a) the names of all such persons, (b) their nationality, (c) their home address, (d) the nature of the offence for which they have been convicted, and (e) the duration and date of expiry of sentence. The Spanish parties concerned will for their part undertake to extradite from Spain all such persons on the expiry of their sentences.

34. When each Commission has submitted the report referred to in paragraph 25(c) (Report "A") above regarding the total number of foreign volunteers to be withdrawn from Spain, and the Spanish Possessions and Dependencies, as laid down in paragraph 25(a) and 26 above, one or two but not all three of the members of each Commission will proceed to some convenient place where the said members of the two Commissions, with the Secretary to the Board, will sit jointly as a "Joint Commission." The Joint Commission will correlate the reports submitted by the two Commissions and will indicate in the light of the data so available the proportion in which the withdrawal from each side is to be carried out and the minimum number of foreign volunteers, serving in each of the classes referred to in paragraph 25(b) above, to be handed over by each Spanish party in accordance with the provisions of 14 above, at successive stages of the actual withdrawal, the length of each stage being fixed at 20 days. The reports prepared by the two Commissions will be attached to the report submitted by the Joint Commission. While the Joint Commission is in session, the remaining Commissioners will continue in Spain the preparatory work for the withdrawal of foreign volunteers. On the completion of the work of the Joint Commission, the Commissioners constituting the Joint Commission will rejoin the Headquarters of their respective Commissions in Spain in order to complete the work of preparation.

35. The Report of the Joint Commission will at once be submitted to the

International Committee, who will then take such decisions as may be necessary to enable the Commissions to proceed to the second part of their task, namely, the actual withdrawal on a proportional basis of foreign volunteers from Spanish soil in the manner laid down in the present Annex, as supplemented by the decisions taken by the International Committee on the report of the Joint Commission, the latter decisions being embodied in supplementary General Instructions issued in like manner as the original General Instructions referred to in paragraph 9 above. Immediately upon the adoption by the International Committee of the report of the Joint Commission, steps will be taken to notify the two Spanish parties.

36. During the period in which the Commissions are engaged in the duties prescribed in paragraphs 25 to 34 above, the Board will take all preliminary steps in their power necessary for bringing the withdrawal plan into operation, including such steps as the recruiting of the international staff required for the Evacuation Areas, Branch Establishments, &c., for the establishment of Third Echelons in France, Gibraltar and the United Kingdom, at which the various grades of the international staff will be equipped with uniforms and given an intensive course of training for camp duties, &c.

37. Immediately on receiving the necessary authority from the International Committee and the funds required to enable action to be taken on that authority, the Board will take all necessary steps for the establishment and maintenance of Evacuation Areas, for the feeding of the international staff and the foreign volunteers in those areas, and generally for bringing the withdrawal plan into operation in accordance with the time-table summarised in paragraph 22 above.

38. On learning from the Board that it will be possible for them to complete the arrangements referred to in paragraph 37 above by the date prescribed in the time-table, the International Committee will notify the two Spanish parties that the actual withdrawal of foreign volunteers will commence on the date laid down in the said time-table. Simultaneously with the above action by the International Committee the Board will issue the necessary orders to the two Commissions.

39. On receipt of the orders referred to in paragraph 38 above, each Commission will begin the withdrawal of foreign volunteers from the portion of Spain with which it is concerned. In order to ensure that, in fact, volunteers are evacuated from Spain *pari passu* in accordance with the proportions laid down by the International Committee, the Board will at all times ensure that the two Spanish parties and the two Commissions are fully informed of the progress of the withdrawal from both parts of Spain.

40. It will be the duty of each Commission to submit a report (Report "G") to the Board as soon as possible after the conclusion of each stage of the evacuation prescribed in paragraph 34 above whether the minimum numbers of foreign volunteers belonging to each of the classes specified in paragraph 25(b) above have been duly handed over to the Evacuation Areas by the Spanish parties concerned.

41. Foreign volunteers who are either—

(a) certified by the Spanish Party concerned as (1) in hospital under treatment for wounds or sickness and (2) unfit for military duty, or

(b) are prisoners of war,

will not be subject to the system of proportional withdrawal but will be withdrawn in the manner indicated in paragraphs 42 and 43 below.

42. All foreign volunteers certified as sick and wounded who are under treatment in hospital or other medical establishments will be evacuated immediately after the completion of the withdrawal of the foreign volunteers who are neither sick nor wounded. In so far as accommodation in the Evacuation Areas permits, the Commissions may, however, arrange with the Spanish party concerned for the transfer to the Evacuation Areas, before the completion of the main withdrawal, of sick and wounded who require some form of medical or surgical treatment but are not confined to bed nor incapacitated from travelling. Sick and wounded who are light medical or surgical cases so transferred will be additional to the daily quota prescribed in paragraph 14 above.

43. Foreign volunteers who are held as prisoners of war will be transferred to the Evacuation Areas for repatriation immediately after the completion of the withdrawal of foreign volunteers who are neither sick nor wounded.

44. Any women foreign volunteers (including any sick and wounded and any who may be held as prisoners of war) will be transferred to the Evacuation Areas for repatriation immediately after the men foreign volunteers who are held as prisoners of war.

45. It will be the duty of the Commissions at all time during the actual withdrawal to take particular care to ensure that the withdrawal is carried out in strict accordance with the several proportions prescribed by the International Committee in the manner indicated in paragraphs 35 and 39 above and embodied in the General Instructions issued to the two Commissions.

46. Each Commission will be responsible for ensuring that on each day foreign volunteers in numbers equal to the daily quotas prescribed in paragraph 14 above are evacuated from the Evacuation Areas for which it is responsible and embarked in transports provided by the Board in the manner prescribed in paragraphs 71 to 76 below. In every transport, in which foreign volunteers are so embarked for repatriation from Spain, there will be embarked one or more Officers of the Board who will give a receipt to the Commandant of the Evacuation Area for the foreign volunteers and will thereafter be responsible for ensuring that no foreign volunteers so embarked leave the ship until her arrival at the port outside Spain at which the foreign volunteers in question are due to be disembarked. It will be the duty of the Officers of the Board referred to above on arriving at the port of disembarkation to obtain receipts for the foreign volunteers, prior to their being disembarked, from the Representatives of the national authorities concerned



in the manner prescribed in paragraph 74 below, and in exchange to hand to the said Representatives documents relating to the identity of the foreign volunteers so transferred to their charge. On the completion of the voyage, the Officers of the Board referred to above will render a certificate to the Board certifying that the foreign volunteers have been duly disembarked in the manner prescribed above, or, if there has been any breach of the prescribed procedure, the nature of such breach.

47. Where any foreign volunteer refuses to comply with the provisions of the withdrawal plan, the Commissions will arrange with the responsible Spanish Authorities for the deportation of the foreign volunteer in question from Spain in the manner indicated in paragraph 61 below.

48. During the process of withdrawal of foreign volunteers from Spain, each Commission will concert with the appropriate Spanish authorities the measures which, when all foreign volunteers as defined in paragraphs 49 to 53 below, the existence of whom is known to the Commissions, have been evacuated, will be necessary to ensure that no foreign volunteers, as defined in these paragraphs, remain unwithdrawn. The arrangements so concerted will be reported by each Commission to the Board by whom these reports will be submitted to the International Committee, which reserves the right to approve, modify, supplement, or reject the proposals so submitted. As soon as all foreign volunteers, the existence of whom is known to the Commissions, had been withdrawn from Spanish soil, *i.e.*, at the beginning of the period specified in paragraph 20 above, each Commission will carry out the measures referred to above, in the manner approved by the International Committee in order to verify that every foreign volunteer, as defined in paragraphs 49 to 52 below, has been evacuated from Spanish soil. These reports will be submitted to the International Committee, who will determine in the light thereof whether the withdrawal plan has been fully carried out.

#### IV. DEFINITION OF THE TERM "FOREIGN VOLUNTEER"

49. For the purpose of the withdrawal plan, the term "foreign volunteer" will include:

- (a) all persons who are, or were on the 18th July, 1936, nationals of any of the countries, the Governments of which are parties to the Non-Intervention Agreement (namely, Albania, Belgium, United Kingdom, Bulgaria, Czechoslovakia, Denmark, Eire, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxemburg, Netherlands, Norway, Poland, Portugal, Roumania, Sweden, Turkey, U.S.S.R., and Yugoslavia), who are, or who at any time since the 18th July, 1936, have been engaged either directly or indirectly in the present conflict in the sense defined in paragraphs 55 and 56 below.
- (b) any stateless persons, formerly the nationals of any of the countries enumerated in (a) above, who are, or have been since

the 18th July, 1936, engaged either directly or indirectly in the present conflict, in the sense defined in paragraphs 55 and 56 below, who are unable to satisfy the Commission concerned that they were habitually resident in the territory of a non-European country.

50. The Commissions will submit reports (Report "H") to the Board, for transmission to the International Committee for their consideration, both during the initial period in which the numbers of foreign volunteers are being ascertained and subsequently from time to time, on the question whether any appreciable gap in the plan for the withdrawal of foreign volunteers is caused by the exclusion from its scope of persons falling within the following classes :

- (i) political exiles, nationals of any of the participating countries, who prior to proceeding to Spain for the purpose of taking part in the present conflict, were habitually resident in some non-European country;
- (ii) stateless persons, formerly the nationals of one or other of the participating countries, who immediately prior to proceeding to Spain for the purpose of taking part in the present conflict, were habitually resident in some non-European country.

51. No person who is liable to evacuation from Spain under paragraph 49(a) above will be exempted therefrom by reason of the fact that he may possess also a second nationality.

52. For the purposes indicated in paragraph 49 above, the nationals of countries under suzerainty, protection, or mandate, will be deemed to be nationals of the countries by which such suzerainty, protection, or mandate is exercised.

53. Where any doubt arises on the question whether any individual is, or is not, a foreign volunteer, as defined in paragraph 49 above, the onus of proof will rest with the individual concerned, and, where such proof is not forthcoming, the individual concerned will be liable to evacuation from Spain under the withdrawal plan.

#### V. DEFINITION OF THE TERM "PERSONS ENGAGED EITHER DIRECTLY OR INDIRECTLY IN THE PRESENT CONFLICT"

54. For the purposes of the withdrawal plan, the Commissions will proceed on the basis that all foreign volunteers, as defined in paragraph 49 above, including those held as prisoners of war, will be liable to be evacuated from Spain, as defined in paragraph 59 below, if they have been engaged either directly or indirectly in the present conflict in any of the categories set out in paragraphs 55 to 58 below.

55. The term "persons engaged either directly or indirectly in the present conflict" will include all persons, other than those who may be able to prove to the satisfaction of the Commission concerned that they were employed in

Spain in such capacities (*e.g.*, in the Spanish Foreign Legion) on or before the 18th July, 1936, falling within any of the following categories:

- (a) combatant personnel of whatever rank—  
either—

- (i) attached to,  
or
- (ii) serving in,  
or
- (iii) serving with—
  - (a) naval,
  - (b) military,  
and
  - (c) air

forces of either of the parties in Spain, including foreign volunteers serving in any autonomous (non-Spanish) units that may be attached to the forces of either of the Spanish parties;

- (b) personnel who, though not employed in an active combatant role, are engaged either in a uniformed capacity or in a civilian capacity, in the maintenance of services essential to the conduct of the military operations of the armed forces of the two parties in Spain, including—

- (i) (a) in the case of the armies and air forces, personnel engaged in the maintenance of the lines of communications, directly connected with, or essential to, the conduct of operations on the field;

- (β) in the case of air forces, personnel engaged on ground services, in aerodromes and similar establishments;  
and

- (γ) in the case of the naval forces, personnel engaged on corresponding duties; and

- (ii) personnel engaged on supply, ordnance and similar services;

- (c) personnel engaged in any capacity as instructors or advisers with the naval, military, or air forces of either of the parties in Spain;

- (d) personnel engaged as officials in, or as expert advisers to, organisations maintained by either Spanish party, where either Commission is satisfied that such organisations are directly concerned with the furtherance of the present conflict—

- (i) where the posts now held by such officials or advisers were held by Spanish nationals prior to the outbreak of the Spanish conflict, or

- (ii) in the event of the posts, having been created since the outbreak of the conflict, where the Commission concerned is satisfied that the foreign national in question would not have been so employed if there had been no such conflict;

- (e) technical experts or operatives engaged as advisers or otherwise in, or in connection with, factories engaged in the manufacture of armaments (including aircraft) or munitions of classes covered by the Non-Intervention Agreement, and personnel correspondingly engaged in establishments concerned with the assembly or repair of armaments (including aircraft) or munitions, where the Commission concerned is satisfied that the person in question would not have been so employed if it had not been for the present conflict;
- (f) personnel engaged in the arms trade with either of the parties in Spain;
- (g) persons who are engaged, or have been engaged, at any time subsequent to the adoption of the Resolution to which the present document forms an Annex, in propaganda for either Spanish party or in any activity in any way repugnant to the intention and spirit of the Non-Intervention Agreement, provided that persons shall only be evacuated from Spain under the provisions of this sub-section where the procedure set out in paragraph 56 below, or that set out in paragraphs 56 and 57 below, as the case may be, has been duly complied with.

56. If either Commission is of the opinion that any person has committed a specific action in Spain which renders him liable to be evacuated from that country under the provisions of paragraph 55(g) above, the Commission will call upon the person in question to give an undertaking in writing that he will not repeat the specific action in question until they have submitted a full report on the whole matter and until a meeting of the Board shall have been held to decide whether the specific act complained of renders the person in question liable to be evacuated from Spain under the withdrawal plan. If at the meeting referred to above the Board decides that the person in question has rendered himself liable to be evacuated from Spain, the Commission concerned will at once notify the Spanish party concerned, who will arrange for the immediate transfer of the said person, to one or other of the Evacuation Areas established in that portion of Spain, for evacuation under the withdrawal plan.

57. Any person (a) who refuses to give an undertaking in the manner prescribed in paragraph 56 above, or (b) who, notwithstanding having given such an undertaking, repeats the specific action which in that undertaking he has undertaken to abstain from repeating, will render himself liable to be evacuated forthwith from Spain, under the withdrawal plan. In every such case, the Commission concerned will at once notify the Spanish party concerned, who will arrange for the immediate transfer of the person in question to one or other of the Evacuation Areas established in that portion of Spain, for evacuation under the withdrawal plan. A full report on every such case will be furnished at the earliest possible moment by the Commission concerned to the Board for transmission to the International Committee.

58. The definitions of persons engaged directly or indirectly in the present conflict given in paragraphs 55 to 57 above will be interpreted in such a way as to exempt from the operation of the withdrawal scheme persons otherwise liable to be evacuated as foreign volunteers who are able to satisfy the Commission concerned that they are actually serving in medical, sanitary, or similar units where such units have been formed by organisations of an established international character or by bodies in any of the participating countries which are recognised in that country as bodies of standing. It will be the duty of the Commissions to scrutinise closely the claims of the individuals for exemption from the operation of the withdrawal scheme. Cases of doubt will be referred by the Commissions to the Board for decision.

#### VI. DEFINITION OF THE TERM "SPAIN"

59. For the purposes of the withdrawal plan, the term "Spain" will be deemed to include both the metropolitan territory of Spain itself (including any areas under autonomous Governments), the islands of the Balearic group, the Canary islands, and the Spanish Zone in Morocco. The Spanish territories of Ifni, Rio de Oro, Rio Muni and Fernando Po are also included within the scope of the withdrawal plan, and Branch Establishments will be despatched thereto if at any time, during the operation of the plan, the International Committee consider such action necessary or desirable.

#### VII. DEFINITION OF THE TERM "REPATRIATION"

60. Foreign volunteers coming within the scope of the withdrawal plan by reason of their falling within one or other of the categories set out in the preceding paragraphs will be evacuated to the countries of which they are nationals, except in the following special cases:

- (a) nationals of any of the countries the Governments of which are parties to the Non-Intervention Agreement, who, prior to proceeding to Spain for the purpose of engaging in the present conflict, were habitually resident as political exiles in some other country the Government of which is a party to the Agreement, and who did not leave such country under an expulsion order or similar instrument, will be evacuated to the country in which they were habitually resident immediately prior to proceeding to Spain;
- (b) nationals of any of the countries the Governments of which are parties to the Non-Intervention Agreement, who went to Spain to take part in the present conflict on behalf of one Spanish party and who have since either deserted to the other party or, having been taken prisoner by that party, have subsequently virtually taken sides with that party by making public statements in their favour or otherwise will be evacuated from Spain in the following manner—

- (i) if the persons in question were habitually resident in some European country other than their own immediately prior to proceeding to Spain for the purpose of taking part in the present conflict, and if they did not leave that country under an expulsion order or similar instrument, they will be dealt with in the manner prescribed in (a) above for political exiles;
- (ii) if the persons in question were habitually resident in their own countries immediately prior to proceeding to Spain, they will be evacuated to any country the Government of which is willing to permit them to enter the territory of its country;
- (c) nationals of any of the countries, the Governments of which are parties to the Non-Intervention Agreement, who were habitually resident in Spain as political exiles, prior to taking part in the present conflict, will be evacuated to any country the Government of which is willing to permit them to enter the territory of its country;
- (d) stateless persons, formerly the nationals of any of the countries, the Governments of which are parties to the Non-Intervention Agreement, will be evacuated to the country in which they were habitually resident immediately prior to proceeding to Spain for the purpose of taking part in the present conflict, if the Government of that country is a party to the Non-Intervention Agreement provided that they had not left that country under an expulsion order or similar instrument, but where such persons left such country under such order or instrument they will be evacuated to any country the Government of which is willing to permit them to enter the territory of its country;
- (e) any person who, in the opinion of the Commission concerned is liable to be withdrawn from Spain as a foreign volunteer as defined in paragraph 49 above, and whom for any reason it is impossible for the Commissions to evacuate from that country, will remain in Evacuation Areas until the matter is otherwise determined by the International Committee.

61. If any foreign volunteer, as defined in paragraph 49 above, refuses voluntarily to proceed from his place of employment to the prescribed evacuation area established by the Commission concerned, he will be handed over by the appropriate Spanish authorities to the officer in charge of such evacuation area. Further, if any foreign volunteer, as defined in paragraph 49 above, refuses voluntarily to comply with the provisions of the withdrawal plan, after his arrival at the prescribed evacuation area, he will be deported from Spain to the country prescribed in paragraph 60 above, to which he would have been evacuated if he had voluntarily complied with the provisions of the plan.

62. Any foreign volunteer, as defined in paragraph 49 above, who, at the time that he proceeded to Spain, was a fugitive from justice, will, nevertheless, be evacuated to the country in which he was habitually resident prior to proceeding to Spain, if the Government of that country is a party to the Non-Intervention Agreement.

VIII. ACTION TO BE TAKEN BY EACH OF THE GOVERNMENTS WHICH ARE PARTIES TO THE NON-INTERVENTION AGREEMENT

63. Each of the participating Governments agree to admit into its respective territories foreign volunteers as defined in paragraph 49 above, who are liable to evacuation thereto under the provisions contained in paragraph 60 above.

64. Each of the participating Governments agree :

- (a) to grant the widest publicity within its own territories to the decision taken by the participating Governments to do all in their power to secure the withdrawal from Spain of foreign volunteers (as defined in paragraph 49 above) engaged in the present conflict;
- (b) to take all possible measures to secure that the decision referred to in (a) above is brought to the knowledge of its nationals engaged either directly or indirectly on either side in Spain, those Governments which have diplomatic or consular representatives in the territory of either of the parties in Spain making use of these officers for this purpose, any Government which has no such representation making arrangements for diplomatic and consular officers representing other Non-Intervention Powers in different parts of Spain to bring the withdrawal plan to the notice of nationals of the country in question;
- (c) (in the case of Governments maintaining diplomatic or consular representatives in either part of Spain) to instruct such diplomatic representatives or consuls (if consuls *de carrière*)—
  - (i) on receipt of a report from the Board that any of their nationals have refused to comply with the provisions of the withdrawal plan, to endeavour to persuade their nationals in question to modify their attitude and thus avoid being deported from Spain in the manner indicated in paragraph 47 above, and
  - (ii) wherever such officials are unable to persuade any of their nationals so reported to comply with the withdrawal plan, to co-operate with the International Commissioners in securing the deportation of these persons from Spain in the manner indicated in paragraph 47 above;
- (d) to take all practicable steps to ensure that its nationals who have been engaged either directly or indirectly in the present conflict

in Spain (as defined in paragraphs 55 to 57 above) shall not be subject to any disability by reason only of having been so engaged, provided that they submit voluntarily to evacuation in the manner prescribed in paragraph 60 above.

IX. THE EXCHANGE OF MUTUAL ASSURANCES BETWEEN EACH OF THE TWO SPANISH PARTIES AND THE INTERNATIONAL COMMITTEE TO ENSURE THAT THE PLAN FOR THE WITHDRAWAL OF FOREIGN VOLUNTEERS IS CARRIED OUT IN THE MANNER PRESCRIBED

65. In order to ensure that the plan for the withdrawal from Spain of foreign volunteers is carried out in the manner prescribed in paragraphs 14 to 64 above, each of the two Spanish parties have exchanged with the International Committee mutual assurances to this end.

66. The Board will co-operate in every possible way with each of the two Spanish parties to secure the smooth and effective working of the withdrawal plan, and in particular in regard to the application of the mutual assurances referred to in paragraph 65 above and to the settlement of any problems of analogous character not expressly provided for therein which may arise in the course of the execution of the withdrawal plan. Each of the two Spanish parties will likewise co-operate in every possible way to secure the successful operation of the said plan.

67. On learning from either Spanish party of any matter which it may have been found impossible to settle by direct negotiation with the Commissions in the portion of Spain concerned, the Board will at once report such matter to the International Committee, with a view to the settlement of the question at issue in a manner satisfactory both to the Board and to the Spanish party concerned.

X. IMMUNITIES AND FACILITIES TO BE GRANTED TO THE BOARD AND TO THE BOARD'S OFFICERS TO ENSURE THAT THE PLAN FOR THE WITHDRAWAL OF FOREIGN VOLUNTEERS IS CARRIED OUT IN THE MANNER PRESCRIBED

68. In order to ensure that the plan for the withdrawal of foreign volunteers is carried out as rapidly as possible in accordance with the provisions of the present Annex, the participating Governments have agreed to grant to the principal officers of the Board, whether stationed at headquarters or serving as members of, or officers of the staff of, the Commissions in Spain or at any subsidiary establishments which the Board may find it necessary to establish elsewhere either inside or outside Spain the immunities normally accorded to diplomatic officers; the right of free communication with the Board, in the case of such officers as may be authorised to communicate direct with the Board; and such other facilities as may be necessary to enable them to exercise the rights and discharge the duties assigned to them, including the grant to such officers of the same priority for telephone and telegraph services as are accorded to diplomatic officers stationed in, or



the national officials of, the country in question. Similar immunities and facilities will be accorded by the participating Governments to officers of the Board passing through their respective territories on the duty of the Board, in so far as such facilities are accorded to the diplomatic officers of the countries concerned.

69. The Board will have the right, in agreement with the Governments of the countries concerned, to establish in their respective territories any bases, depots or other establishments for personnel or supplies, as the case may be, which they may consider necessary for the operation of the withdrawal plan.

70. The participating Governments have agreed that where for the purpose of the withdrawal plan it is necessary for the Board to import foodstuffs or material of any kind into the territories of the countries concerned all foodstuffs or materials so imported shall be exempt from import duties and similar charges of every description, and that steps shall be taken to ensure that there is no avoidable delay in the transport of such foodstuffs or materials to any base depots or other establishments which the Board may find it necessary to establish in the territories of the countries concerned, provided that nothing in this paragraph shall affect the right of the Governments concerned to verify the nature of the consignments in question.

XI. THE COST OF THE WITHDRAWAL PLAN, AND THE FINANCIAL ARRANGEMENTS REQUIRED IN CONNECTION THEREWITH

(a) *The method by which financial responsibility for the withdrawal plan will be apportioned between the participating Governments and the arrangements to be made in connection therewith*

71. The whole of the expenditure involved in carrying out the withdrawal from Spain of foreign volunteers in the manner prescribed in paragraphs 14 to 67 above will be incurred on behalf of the participating Governments by the Board, the necessary funds being provided in the following manner:

- (a) the funds required to defray the expenditure incurred by the Board on the establishment and operation of the international mechanism, as defined by the U.S.S.R. Government, required for the conduct of the plan will be defrayed in equal shares by the Governments of the United Kingdom, France, Germany, Italy and the U.S.S.R.
- (b) the funds required to defray the expenditure, other than that referred to in (a) above, to be incurred by the Board in the establishment of Evacuation Areas and in the maintenance thereof of foreign volunteers until embarked at the prescribed Spanish port adjacent to the said Evacuation Areas for repatriation from Spain, and also all expenditure incurred by the Board in connection with the withdrawal plan at their head-

quarters in London or in connection with any Base or other Establishments which they may find necessary to constitute either inside or outside Spain will be defrayed in equal shares by the Governments of the United Kingdom, France, Germany and Italy;

- (c) the funds required for the provision of the sea transport of the foreign volunteers from Spain to whichever may be the port of disembarkation prescribed in paragraph 72 below, will be provided by the Governments parties to the Non-Intervention Agreement on a basis proportional to the number of foreign volunteers due, under the provisions of paragraphs 60 to 62 above, to be repatriated to their respective countries, the method by which these payments are to be calculated and made being those set out in paragraphs 96 to 98 below.

72. The prescribed ports of disembarkation are the following:

- (a) *Port of London* at which will be disembarked all foreign volunteers falling within the following classes—
  - (i) foreign volunteers (including prisoners of war) due to be repatriated to the United Kingdom, irrespective of the Spanish port at which they were embarked;
  - (ii) foreign volunteers (including prisoners of war) due to be repatriated to Eire, irrespective of the Spanish port at which they were embarked;
  - (iii) foreign volunteers embarked at Palamos or Carthagena, due to be repatriated to Belgium, Denmark, Estonia, Finland, Latvia, Lithuania, Luxemburg, Netherlands, Norway, Poland and Sweden;
  - (iv) foreign volunteers held as prisoners of war by the opposing Spanish party, embarked at Cadiz and Malaga, due to be repatriated to the countries named in (iii) above.
- (b) *Port of Hamburg* at which will be disembarked all foreign volunteers falling within the following classes—
  - (i) foreign volunteers (including prisoners of war) due to be repatriated to Germany, irrespective of the Spanish port at which they were embarked;
  - (ii) foreign volunteers embarked at Cadiz and Malaga, due to be repatriated to Belgium, Denmark, Estonia, Finland, Latvia, Lithuania, Luxemburg, Netherlands, Norway, Poland and Sweden;
  - (iii) foreign volunteers held as prisoners of war by the opposing Spanish party, embarked at Palamos and Carthagena, due to be repatriated to the countries named in (ii) above.
- (c) *Port of Lisbon* at which will be disembarked all foreign volunteers (including prisoners of war), due to be repatriated to

Portugal, irrespective of the Spanish port at which they were embarked.

- (d) *Port of Marseilles* at which will be disembarked all foreign volunteers falling within the following classes—
  - (i) foreign volunteers (including prisoners of war) due to be repatriated to France, irrespective of the Spanish port at which they were embarked;
  - (ii) foreign volunteers embarked at Palamos and Carthagen, due to be repatriated to Albania, Bulgaria, Czechoslovakia, Greece, Hungary, Roumania, Turkey, U.S.S.R. and Yugoslavia;
  - (iii) foreign volunteers held as prisoners of war by the opposing Spanish party, embarked at Cadiz and Malaga, due to be repatriated to the countries named in (ii) above.
- (e) *Port of Genoa* at which will be disembarked all foreign volunteers falling within the following classes—
  - (i) foreign volunteers (including prisoners of war), due to be repatriated to Italy, irrespective of the Spanish port at which they were embarked;
  - (ii) foreign volunteers embarked at Cadiz and Malaga, due to be repatriated to Albania, Bulgaria, Czechoslovakia, Greece, Hungary, Roumania, Turkey and Yugoslavia;
  - (iii) foreign volunteers held as prisoners of war by the opposing Spanish party, embarked at Palamos and Carthagen, due to be repatriated to the countries named in (ii) above.

73. Each of the participating Governments will be directly responsible for making any arrangements and for incurring any expenditure which may be necessary for the reception and (where necessary) maintenance of foreign volunteers due for repatriation to their country from the time at which the said foreign volunteers are disembarked from the Board's transports at the prescribed port of disembarkation specified in paragraph 72 above, and, in those cases in which the said port of disembarkation is an intermediate port through which the said foreign volunteers have to pass in transit to the countries to which they are to be repatriated, for providing at their own charge transport, by land or sea as the case may be, from the said port of disembarkation to the country to which the foreign volunteers are due to be repatriated, and for making all other arrangements for their repatriation, including those specified in paragraph 74 below.

74. In every case where foreign volunteers are due to be disembarked at some intermediate port, as prescribed in paragraph 72 above (*i.e.*, in the case of all foreign volunteers other than those due to be repatriated to the United Kingdom, France, Germany, Italy and Portugal), the arrangements to be made by each of the Governments concerned for the reception at the port of disembarkation of the foreign volunteers and for their despatch therefrom

to the countries to which they are to be repatriated include the following measures:

- (a) at the port of disembarkation a Consular or other approved officer of the country concerned will take over from the Board's Sea Escort Officer (referred to in paragraph 46 above) the foreign volunteers due for repatriation to the said country, and, on receiving from the said Sea Escort Officer a nominal roll of the foreign volunteers in question, will give him a receipt acknowledging the due transfer of the said foreign volunteers;
- (b) The Consular or other approved officer (referred to in (a) above) will make all arrangements for the reception and further transit of the said foreign volunteers, including, in so far as may be necessary, the provision of temporary passports, the obtaining of any necessary transit visas, the purchase of tickets for the further land and/or sea transport of the said foreign volunteers, the maintenance, and (where necessary) the accommodation, of the said foreign volunteers, both while in the country in which they have been disembarked and in their further transit to the country to which they are to be repatriated, in order to ensure that the foreign volunteers transferred are in fact repatriated at the earliest possible moment.

75. In order to facilitate the discharge by the Governments concerned of the duties prescribed in paragraph 74 above, the Board will furnish to the Representatives on the International Committee of the said Governments as rapidly as may be practicable particulars regarding the number of foreign volunteers embarked from day to day in Spain for repatriation and the approximate date on which the transports carrying the said foreign volunteers are due to arrive at the prescribed ports of disembarkation.

76. As soon as possible after each party of foreign volunteers handed over by one of the Board's Sea Escort Officers to a Consular or other approved officer at a prescribed intermediate port arrives in the country to which the foreign volunteers in question are due to be repatriated, the Government of the said country will furnish to the Board a nominal roll of the foreign volunteers who have so arrived, in order that the Board may be in a position to report to the International Committee when the repatriation of foreign volunteers evacuated from Spain has in fact been completed.

- (b) *The establishment and administration of two Funds to be known respectively as "International Fund No. 2" and "International Fund No. 3," and arrangements incidental thereto*

77. As from the date on which the International Committee finally adopt the Resolution to which the present document forms an Annex, the International Fund established in accordance with the Resolution adopted by the International Committee on the 8th March, 1937, for the financing of the

Plan for the Observation of the Spanish frontiers by land and sea will be known as "International Fund No. 1."

78. The contributions to be provided by the Governments named in sub-sections (a) and (b) of paragraph 71 above to cover the expenses of the two portions of the Withdrawal Plan as defined therein will be paid into an International Fund to be known as "International Fund No. 2."

79. The sums to be provided by each of the participating Governments concerned in repayment to the Board of expenditure incurred on the provision of sea transport for the carriage of foreign volunteers from Spain, as prescribed in sub-section (c) of paragraph 71 above, will be paid into an International Fund to be known as "International Fund No. 3."

80. International Fund No. 2 and International Fund No. 3 will be administered in the same manner and in accordance with the same principles as those already adopted in the administration of International Fund No. 1, and the same officer will act as Accounting Officer for all three Funds.

(c) *The cost of the portion of the Withdrawal Plan to be met from International Fund No. 2 and the provision of the funds required therefor*

81. In view of the fact that neither the total number of foreign volunteers to be evacuated nor the proportions in which they are divided between the two Spanish parties nor the cost of the International mechanism referred to in sub-section (a) of paragraph 71 above will be known until the receipt, on approximately the fortieth day after the final adoption by the International Committee of the Resolution of which the present document forms an Annex, of the Report of the Joint Commission referred to in paragraph 34 above, it is not possible at this stage to determine the precise limit of the financial liabilities incurred by the Governments of the United Kingdom, France, Germany, Italy and the U.S.S.R., by reason of the undertakings given by the said Governments, as set out in sub-sections (a) and (b) of paragraph 71 above.

82. The Governments of the United Kingdom, France, Germany and Italy have further agreed that they will contribute in equal shares to International Fund No. 2 to meet expenditure incurred on the portion of the Withdrawal Plan payable from the said Fund, the combined payments of the four Governments referred to above to be calculated in accordance with the following scales after the deduction therefrom of the contribution to be paid by the Government of the U.S.S.R. in accordance with sub-section (a) of paragraph 71 above:

- (a) If the Report of the Joint Commission shows that there is a disparity of less than ten per cent. between the numbers of foreign volunteers serving with the two Spanish parties, the total sum to be paid into International Fund No. 2 by the contributing Governments will be whichever of the sums shown below corresponds with the total number of foreign volunteers to be evacuated—

## THE SPANISH CIVIL STRIFE

Number of foreign volunteers to be evacuated		Basis on which the sums to be paid into International Fund No. 2 by the Gov- ernments of the United Kingdom, France, Germany, and Italy, are to be calculated £
64,000 foreign volunteers	.....	1,020,000
76,000 " "	.....	1,060,000
88,000 " "	.....	1,100,000
100,000 " "	.....	1,140,000
112,000 " "	.....	1,180,000
124,000 " "	.....	1,220,000
136,000 " "	.....	1,260,000

- (b) If the report of the Joint Commission shows that there is a disparity of approximately 40 per cent. between the number of foreign volunteers serving with one Spanish party as compared with that serving with the other Spanish party, the total sum to be paid into International Fund No. 2 by the contributing Governments will be whichever of the sums shown below corresponds with the total number of foreign volunteers to be evacuated—

Number of foreign volunteers to be evacuated		Basis on which the sums to be paid into International Fund No. 2 by the Gov- ernments of the United Kingdom, France, Germany, and Italy, are to be calculated £
64,000 foreign volunteers	.....	1,220,000
76,000 " "	.....	1,260,000
88,000 " "	.....	1,300,000
100,000 " "	.....	1,340,000
112,000 " "	.....	1,380,000
124,000 " "	.....	1,420,000
136,000 " "	.....	1,460,000

- (c) If the report of the Joint Commission shows that there is a disparity of more than ten per cent. but of less than forty per cent. between the number of foreign volunteers serving with the two Spanish parties, or if the total numbers of foreign volunteers is shown to be less than 64,000 or more than 136,000, the Governments of the United Kingdom, France, Germany and Italy will make to International Fund No. 2 such payments intermediate

in amount between the sums shown in the scale given in (a) above and those shown in the scales given in (b) above as may be necessary to enable the Board to effect the withdrawal of foreign volunteers from Spain in the manner indicated in the present document.

- (d) If the Report of the Joint Commission shows that there is a disparity of more than forty per cent. between the number of foreign volunteers serving with the two Spanish parties, the Governments of the United Kingdom, France, Germany, and Italy will make to International Fund No. 2 such payments in excess of the scales given in (b) above, as may be necessary to enable the Board to effect the withdrawal of foreign volunteers from Spain in the manner indicated in the present document.

83. Immediately upon the receipt of the Report of the Joint Commission, the Accounting Officer to International Fund No. 2 will submit to the International Committee a report showing:

- (a) the final estimate of the cost of the withdrawal plan, determined in accordance with the scales set out in paragraph 82 above in the light of the particulars contained in the Report of the Joint Commission; and
- (b) the total amount to be contributed towards the cost of the plan under sub-section (a) of paragraph 71 above by each of the five Governments named therein, and the amount to be contributed under sub-section (b) of the said paragraph by the four Governments named therein.

84. In order to enable the Board to take all measures (whether by the establishment of Evacuation Areas in Spain, or by the purchase of equipment and stores required therefor or by the purchase of foodstuffs, or by the recruitment of international staff or in any manner) which may be necessary to ensure that the Evacuation Areas are ready to receive the first drafts of foreign volunteers on the forty-sixth day after the final adoption by the International Committee of the Resolution of which the present document forms an Annex, the Governments of the United Kingdom, France, Germany and Italy have agreed to take all measures (including, in so far as the Board may find to be necessary, the provision of sterling in London) required to ensure that, on the date on which the said Resolution is finally adopted by the International Committee, the following payments shall be made into International Fund No. 2:

	£
United Kingdom .....	175,000
France .....	175,000
Germany .....	175,000
Italy .....	175,000
	<hr/>
	700,000

The Government of the U.S.S.R. will on the same date pay to the Board whatever may be determined, in the light of the report referred to in paragraph 83 above, as being due by that Government to the Board under the provisions of sub-section (a) of paragraph 71 above.

85. The Governments of the United Kingdom, France, Germany and Italy further agree that the following payments in respect of the second month of the plan shall be made into International Fund No. 2 on the twenty-eighth day after the date on which the payments set out in paragraph 84 are made:

	£
United Kingdom .....	50,000
France .....	50,000
Germany .....	50,000
Italy .....	50,000
	<hr/>
	200,000

86. The Governments of the United Kingdom, France, Germany, and Italy agree that the total amounts to be paid into International Fund No. 2 in respect of the third, fourth, and fifth months of the Plan respectively shall be equal amounts, each equal to one-third of the portion of the cost of the Plan remaining unpaid after the payments set out in paragraphs 84 and 85 shall have been made. Each of the four Governments referred to above will pay into International Fund No. 2 in respect of the third, fourth, and fifth months a sum equal to one-fourth of the total amount payable into the Fund in respect of each of these months. The contributions due in respect of the third month shall be paid into the Fund twenty-eight days after the date on which the contributions in respect of the second shall have fallen due, and the payments of the contributions in respect of the fourth and fifth months shall be made thereafter at intervals of twenty-eight days.

87. In order to reduce so far as may be practicable the amount of foreign exchange required by the Governments concerned to enable them to make on the due dates the monthly contributions set out in paragraphs 84 to 86 above, arrangements will be made by the Board to distribute purchases of equipment, stores, foodstuffs, &c., among the countries of the said Governments, in so far as this may be practicable, having regard to such factors as the time available, price, quality, and availability of supply. With the same object the Board will arrange for three-quarters of the salaries of members of the international staff who are nationals of the said countries to be paid to them in their own countries in their national currencies. In order to determine the total amounts to be paid by the said Governments in London in sterling, the Accounting Officer to International Fund No. 2 will address communications as soon as may be practicable to the Representatives of the Governments concerned, stating:



- (a) how much of their several monthly contributions to International Fund No. 2 it will be possible for the Board, subject to the conditions set out in paragraph 88 below, to accept in the currency of the country concerned, this portion to be paid by the Government concerned to a Bank account in the said country to be opened by the Board for financing payments to be made in the said country; and
- (b) how much of their several monthly contributions to International Fund No. 2 will be required to be made in sterling in London.

88. The Governments referred to in paragraph 87 above agree for their part that the arrangements set out in the said paragraph shall be subject to the following conditions:

- (a) in so far as any of the said Governments may pay portions of their contributions to International Fund No. 2 in their own currencies, the portions so paid shall be credited in the accounts of the Board either at the rate of the day on which the payments in question are actually made or at the average rate of the twenty-eight days immediately preceding, whichever shall be the more profitable to the Board; and
  - (b) if on the conclusion of the Withdrawal Plan any part of a Government's contribution, previously made by that Government in its own currency, remains unexpended, the said Government will take over such balance from the Board at the rate at which the last such transfer of currency had been made to the Board, and simultaneously with so doing will pay a like sum in sterling into International Fund No. 2 in London.
- (d) *Adjustments to be made between International Fund No. 2 and International Fund No. 1*

89. In order to avoid unnecessary complications of an accountancy character, the participating Governments have agreed that the cost of the miscellaneous management services to be undertaken by the Board in accordance with paragraph 9 above, in connection with the withdrawal plan (*e.g.*, the part-time services of officers appointed by the Board in connection with the Observation Scheme, share of rent, heating and lighting of existing accommodation, share of postage, telephones, and other services certified by the Accounting Officer to International Fund No. 1 as being common services), shall be assumed to amount to three per cent. of the sums issued monthly from International Fund No. 2, and that a sum so calculated shall be transferred from the said Fund to International Fund No. 1, in repayment of the cost of such management services. Expenditure at the headquarters of the Board certified by the Accounting Officer of International Fund No. 2 as directly attributable to the withdrawal plan (*e.g.*, salaries of officers at headquarters specially appointed in connection with the withdrawal scheme,

rent of additional accommodation hire as the resulting of the adoption of the withdrawal plan) will form a charge on International Fund No. 2.

90. Such sums as, with the authority of the International Committee, may have been expended from International Fund No. 1 prior to the adoption of the Resolution to which the present document forms an Annex, on preparatory work connected with the withdrawal of foreign volunteers from Spain will be repaid to the said Fund from International Fund No. 2 as soon as payments into that Fund are received from the Governments concerned, as provided in paragraph 84 above, together with a sum equal to five per cent. thereof, representing the cost of the miscellaneous management services performed by the Board in connection with the withdrawal plan during the period between the 1st January, 1938, and the date of the final adoption of the Resolution to which the present document forms an Annex.

(e) *Adjustment in respect of advances made by certain Governments*

91. As regards the advance of £50,000 made in sterling to the Board in London in equal shares by the Governments of the United Kingdom, France, Germany and Italy, on the day on which the International Committee agreed to despatch the present document to the two Spanish parties for their approval, the sum of £30,000 shall be treated as constituting advances made by the Governments concerned in respect of the first contributions to be made by them towards the cost of the scheme, as provided in paragraph 82 above. The remaining portion (£20,000) of the said advance of £50,000 and the whole of any subsequent monthly advances of £20,000 similarly made by the said Governments to the Board prior to the final adoption by the International Committee of the Resolution of which the present document forms an Annex shall be treated as contributions made by the said Governments towards the cost of the Withdrawal Plan, additional to those provided for in paragraph 82 above.

(f) *Financial arrangements to be made to ensure the provision on an agency basis of the Board of sea transport for carrying the foreign volunteers from Spain at the dates required by the time-table of the Withdrawal Plan*

92. In view of the fact that the number of foreign volunteers to be repatriated to the countries the Governments of which are parties to the Non-Intervention Agreement will not be known until the receipt, on approximately the fortieth day after the final adoption by the International Committee of the Resolution of which the present document forms an Annex, of the Reports (Report "C") to be submitted by the Commissions in accordance with the provisions of paragraph 30 above, it will not be possible for the Governments concerned to pay their respective contributions into International Fund No. 3 in sufficient time to enable the Board to employ the sums so received for the payment of the fees required for the first month's charter of the vessels to be employed for carrying the foreign volunteers from Spain. On the other hand, it is essential that all the necessary arrange-

ments for chartering these vessels should have been made by the Board in sufficient time to ensure that the sea transport required is available at the Spanish ports concerned on the fifty-first and subsequent days after the final adoption of the Resolution of which the present document forms an Annex, in order that effect may be given to the time-table of the Withdrawal Plan, summarised in paragraph 22 above.

93. In order to provide the necessary finance to enable the Board to charter the sea transport required in the first months of the plan, the Governments of the United Kingdom, France, Germany and Italy agree to provide the Board on the date on which the Resolution of which the present document forms an Annex with a sum of £320,000 in the following manner, on the assumption that the necessary ships are available from the four countries named below:

United Kingdom: £80,000 to be paid to the Board in London.

France: a sum in Francs equivalent to £80,000.

Germany: a sum in Reichsmarks equivalent to £80,000.

Italy: a sum in Lire equivalent to £80,000.

94. The sums advanced to the Board in accordance with the provisions of paragraph 93 above will be repaid by the Board to the Governments concerned from International Fund No. 3, when and to the extent that such repayment is possible by reason of the receipt by the Board of payments in respect of sea transport made by the participating Governments in accordance with the provisions of sub-section (c), paragraph 71, above, it being understood that the said advances will be refunded by the Board to the Governments concerned on the conclusion of the Withdrawal Plan, the funds from which such repayments are to be made being the funds received by the Board from the participating Governments in respect of the provision of sea transport, as provided in paragraph 97 below.

95. In the case of advances made to the Board under the provisions of paragraph 93 above in currencies other than sterling, they shall be made at the rate of the day, and repayments made by the Board in respect of such advances shall be made at the same rate as that at which the advances in question were originally made to the Board.

96. Immediately upon the receipt of the special reports (Report "C") to be submitted by the Commissions in accordance with the provisions of paragraph 30 above, the Accounting Officer to International Fund No. 3 shall address a communication to the representative of each of the Governments parties to the Non-Intervention Agreement:

- (a) stating the total number of foreign volunteers to be evacuated, under the provisions of paragraphs 60 to 62 above, to the said country from each portion of Spain;
- (b) showing the number of such foreign volunteers to be evacuated to the said country from each of the four ports of embarkation in Spain specified in paragraph 72 above;
- (c) stating the amount due by the said Government to the Board in respect of the provision of sea transport for the foreign volun-

teers in question from each of the four ports of embarkation referred to above;

- (d) requesting the representative in question to furnish to the Board a cheque for the sum due at the earliest possible moment, payments to be made in the following manner—
  - (i) *in the case of the Governments of France, Germany and Italy*, in which countries part of the shipping required will be taken up on charter—
    - (a) four-fifths to be paid in Francs, Reichsmarks or Lire, as the case may be, to accounts opened by the Board in banks in Paris, Berlin and Rome, respectively;
    - (b) one-fifth of the said amount to be paid in sterling to the Board in London.
  - (ii) *in the case of the Governments of all the other participating countries*, payment to be made to the Board in sterling in London;
- (e) (in the case of Governments concerned with foreign volunteers who will be disembarked at ports situated in countries other than their final destination) reminding the representative in question of the obligations entered into on behalf of the Government concerned in regard to the provision of the further transport, by land or sea, of the foreign volunteers in question, as set out in paragraph 73 above.

97. Each of the Governments parties to the Non-Intervention Agreement, recognising that any delay in the provision of sea transport will dislocate the time-table laid down for the Withdrawal Plan, as summarised in paragraph 22 above, agrees to take all possible measures in advance to ensure that, upon the receipt of the communication from the Accounting Officer to International Fund No. 3 referred to in paragraph 96 above, the payment due by the said Government in respect of sea transport is made to the Board with the least possible delay after the receipt of the said communication.

98. The fares to be charged to Governments by the Board in respect of sea transport will be calculated upon a mileage and *per capita* basis, and will represent a due portion of the actual outlay incurred by the Board on the provision of this service, to which shall be added a charge of two per cent. to cover miscellaneous expenses (including expenses in connection with accounting and audit) incurred by the Board in connection therewith.

## PART 5. THE GRANT IN CERTAIN CIRCUMSTANCES OF BELLIGERENT RIGHTS TO THE TWO PARTIES IN SPAIN

### I. INTRODUCTORY

99. With a view to the more effective application of the policy of non-intervention, the participating Governments agree that, as from a date to be determined in the manner indicated in paragraph 192 below, they will recog-

nise the two parties in Spain as possessing a status which justifies them in exercising belligerent rights over ships at sea, whether by the use of warships or aircraft, in accordance with the rules governing such exercise, subject to a prior assurance being given by the two parties in Spain that such belligerent rights will be exercised only in the manner indicated in paragraphs 100 to 110 below.

100. The rules governing the exercise of belligerent rights over ships at sea referred to in paragraph 99 above are the recognised rules of international law on the subject. Such belligerent rights may be exercised by aircraft in so far as this can be done without infringement of the said rules or of the principles which underlie them.

## II. THE CONTRABAND LISTS TO BE ADOPTED

101. The contraband lists to be adopted by the two parties in Spain, when the participating Governments recognise that they possess a status which justifies them in exercising belligerent rights over ships at sea in the manner provided in paragraph 99 above, will be identical with the list of goods the export of which to Spain may from time to time be prohibited under the Non-Intervention Agreement, and at the outset, therefore, will be identical with the list of goods given in paragraph 2 above. At any time after the adoption by the International Committee of the Resolution to which the present document forms an Annex, it will be open to either of the Spanish parties to suggest that particular materials or classes of material should be added to the contraband list and, therefore, to the list of goods the export of which to Spain is prohibited by the Non-Intervention Agreement. The question whether additions so suggested should be made to these lists will be subject to agreement in the International Committee, and to negotiations between the International Committee as a whole and the Spanish parties.

## III. THE GRANT IN CERTAIN CIRCUMSTANCES BY THE SPANISH PARTIES TO SHIPS HAVING THE RIGHT TO FLY THE FLAG OF ANY OF THE PARTICIPATING COUNTRIES OF UNMOLESTED PASSAGE WHILE PROCEEDING TO OR FROM SPANISH PORTS WHEN SUCH SHIPS HAVE COMPLIED WITH A PRESCRIBED PROCEDURE

102. As a corollary to the provisions contained in paragraph 101 above, the two parties in Spain will give an undertaking that, except in the special cases referred to in paragraph 106 below, they will allow, both on the high seas and in territorial waters, the unmolested passage to and from Spanish ports of ships having the right to fly the flag of any of the countries the Governments of which are parties to the Non-Intervention Agreement, where such ships are (a) carrying Observing Officers appointed by the Board, or have been granted a certificate in lieu thereof under the provisions of paragraph 132 below, and (b) are flying the pennant of the Board in the manner prescribed in paragraph 103 below. This undertaking will not, however,

prevent the visit of such ships at sea for the exclusive purpose of verifying that the ship in question is entitled to fly the flag of one of the countries the Governments of which are parties to the Non-Intervention Agreement, and that conditions (a) and (b) set out in the preceding sentence are being complied with.

103. Ships having the right to fly the flag of any of the countries the Governments of which are parties to the Non-Intervention Agreement will only be entitled to unmolested passage in the manner provided in paragraph 102 above, if, whenever there are Observing Officers on board, those officers have authorised the Non-Intervention Pennant to be flown. If in any case the Observing Officers on board a ship detect an attempted breach of the Non-Intervention Agreement either by the carriage to Spain of arms or war material or foreign volunteers, they will refuse to authorise the flying of the Non-Intervention Pennant, or, if the pennant has already been hoisted, they will order it to be hauled down, and in such case the Observing Officers will so inform the Commander of the Spanish warship, and the ship will not be entitled to unmolested passage in the manner provided in paragraph 102 above.

104. In order to render possible the withdrawal of foreign volunteers from Spain in the manner laid down in Part 4 of the present document, the two parties in Spain will undertake, notwithstanding the recognition by the participating Governments of their belligerent status in the manner indicated in the present Part, neither to impede nor to interfere with the passage to or from any Spanish port, even when under blockade, (a) of ships chartered by the Board to carry to or from Spain food-stuffs or material required solely for the purpose of the withdrawal plan or of the Observation Plan, or (b) of ships proceeding to such ports for the purpose of embarking, or proceeding therefrom after having embarked, foreign volunteers for repatriation to their respective countries, provided:

- (i) that such ships carry Observing Officers and fly the Non-Intervention Pennant; and
- (ii) that such ships shall be liable to visit by the Spanish party concerned in the manner prescribed in paragraph 102 above; and
- (iii) that the arrival of such ships is previously notified to the appropriate Spanish authorities.

105. The special pennant of the International Board for Non-Intervention in Spain, referred to in paragraphs 102 and 103 above, is a white triangular flag 7 ft. 6 in. broad, 9 ft. 6 in. long, with two black balls, 2 ft. 3 in. in diameter, horizontally placed 3 ft. apart.

#### IV. SPECIAL PROVISIONS RELATING TO SHIPS ENGAGED IN UNNEUTRAL SERVICE OR IN BREACH OF BLOCKADE

106. The special cases referred to in paragraph 102 above, in which a ship having the right to fly the flag of any of the countries the Governments

of which are parties to the Non-Intervention Agreement will not be entitled to unmolested passage to and from Spanish ports, are those in which the ship in question is engaged either in unneutral service (within the meaning of paragraph 107 below) or in breach of a blockade which has been duly notified and is effectively maintained.

(a) *Ships engaged in unneutral service*

107. For the purpose of paragraph 106 above, a ship will be deemed to have lost the right of unmolested passage prescribed in paragraph 102 above by reason of being engaged in unneutral service, if she :

- (a) takes a direct part in hostilities; or
- (b) is engaged in the transport of troops of either Spanish party; or
- (c) is engaged in the transmission of intelligence of military value in the interest of either Spanish party, as, for example, by the use of wireless, or otherwise renders direct assistance of a similar character to either Spanish party in the conduct of its military operations; or
- (d) is, either by reason of her being directly chartered by the official authorities of either Spanish party, or by reason of the presence on board of an Agent of either party who has authority to direct her movements, at the exclusive disposal of the official authorities of either Spanish party.

(b) *Ships engaged in breach of blockade*

108. In accordance with the existing recognised rules of international law, it will be understood that if, where a blockade of a specified portion of the coast of Spain, or of the Spanish Dependencies, or of the Spanish Zone in Morocco, has been duly notified and is effectively maintained by either of the parties in Spain as prescribed in paragraph 106 above, any ship, having the right to fly the flag of any of the countries, the Governments of which are parties to the Non-Intervention Agreement, passing to such coasts has no knowledge, actual or presumptive, of the blockade, the Spanish naval forces will be free to inform such a ship that a blockade as aforesaid is in force and to order her not to proceed to any port situated within the portion of coast under blockade. If any such ship, after having received such an order, nevertheless attempts to proceed to such a port, the naval forces of the Spanish party concerned will be entitled to treat the ship as engaged in breach of blockade.

V. CONDITIONS GOVERNING THE ENTRY INTO SPANISH PORTS UNDER  
BLOCKADE OF WARSHIPS OF THE PARTICIPATING COUNTRIES

109. It is understood that warships of the countries the Governments of which are parties to the Non-Intervention Agreement will not be refused permission to enter a blockaded port for the purpose of maintaining contact

with the diplomatic or consular representatives of whatever may be the country concerned.

VI. NON-INTERFERENCE WITH SHIPS OF THE PARTICIPATING COUNTRIES  
NOT BOUND FOR SPANISH DESTINATIONS

110. In view of the fact that ships engaged in trade between countries other than Spain (including the Spanish Dependencies and the Spanish Zone in Morocco) are obliged in certain areas to pass near to Spanish coasts, the parties in Spain will give an undertaking, prior to the recognition of their belligerent status by the participating Governments, that they will take no steps to impede, or interfere with, the passage of such ships (other than Spanish ships). Save as provided in the following sentence, this undertaking is to be interpreted as precluding, not only direct interference, for example, by the use of warships or aircraft, but also indirect interference, such as mine laying in such positions that, even though the operation were carried out in a manner consistent with the relevant rules of international law, interference or danger would be involved to ships on any of the routes normally followed by ships not engaged in traffic with Spain, or the Spanish Dependencies or the Spanish Zone in Morocco. This undertaking will not, however, prevent the visit of such ships at sea for the exclusive purpose of verifying that they are in fact not on that voyage proceeding to or from a port in Spain, the Spanish Dependencies, or the Spanish Zone in Morocco. If any of the Governments parties to the Non-Intervention Agreement notify either directly or through the Board to the two Spanish parties the names and other necessary particulars, including itineraries of ships having the right to fly the flags of their respective countries which are engaged in regular trades between non-Spanish ports on regular routes which pass near the Spanish coasts, the ships so notified will not be subject to visit at sea in the manner provided above, except in any case where the Commander of the Spanish warship has reasonable grounds for believing that a ship claiming exemption from visit under this provision has no claim thereto.

VII. THE TREATMENT TO BE ACCORDED TO SPANISH WARSHIPS IN NON-  
SPANISH PORTS AFTER THE RECOGNITION BY THE PARTICIPATING  
GOVERNMENTS OF THE BELLIGERENT STATUS OF THE  
SPANISH PARTIES

111. It will be understood that no warships or auxiliary vessels in the service of either Spanish party will receive in the ports of the countries, the Governments of which are parties to the Non-Intervention Agreement, any facilities for repairs, reconditioning, or refitting which, according to the existing recognised rules of international law, belligerent warships or auxiliary vessels are not entitled to receive in non-belligerent ports.



VIII. RESERVATION BY THE PARTICIPATING GOVERNMENTS OF THE RIGHT  
TO PROTECT THEIR RESPECTIVE SHIPPING AGAINST ANY IMPROPER  
EXERCISE OF BELLIGERENT RIGHTS BY EITHER SPANISH PARTY

112. Each of the participating Governments reserves the right to protect ships having the right to fly its flag against the exercise by either of the Spanish parties of belligerent rights except in the manner provided in paragraphs 99 to 110 above, or against any misuse of the provisions set out therein. Where one of the participating Governments takes steps to protect its shipping in the manner provided in the present paragraph, it will inform the International Committee of the matters in respect of which the Spanish party in question has, in its opinion, improperly exercised the belligerent rights recognised under paragraph 99 above.

IX. PROVISION FOR THE ACCESSION OF GOVERNMENTS WHICH ARE NOT  
PARTIES TO THE NON-INTERVENTION AGREEMENT TO THE PRO-  
VISIONS RELATING TO THE RECOGNITION OF THE BEL-  
LIGERENT STATUS OF THE SPANISH PARTIES

113. The participating Governments have agreed that immediately upon the final adoption of the Resolution of which the present document forms an Annex, the International Committee, through the Chairman, should inform the Governments of countries which are not parties to the Non-Intervention Agreement of their intention to recognise the belligerent status of the two parties in Spain in the manner prescribed in paragraphs 99 to 112 above, and should invite their co-operation with a view to making the policy of non-intervention more effective.

114. It has been further agreed that, where any such Government:

(a) is prepared either—

- (i) to co-operate in the manner indicated in paragraph 113 above by recognising the belligerent status of the two Spanish parties in the manner referred to therein, or
- (ii) to become a party to the Non-Intervention Agreement, and

(b) is prepared at the same time—

- (i) to undertake the obligations set out in Parts 1, 2 and 3 of the present document,
- (ii) to impose on the masters of the ships having the right to fly the flags of their respective countries the obligations set out in Part 6 of the present document, and
- (iii) to grant to the officers of the Board the rights, facilities, immunities, &c., prescribed in the said Part,

the Board shall provide Observing Officers for embarkation on such ships when proceeding to Spanish ports, thus entitling such ships to fly the Non-Intervention Pennant in the manner prescribed in paragraph 149 below and to enjoy unmolested passage to and from Spanish ports in the manner indicated in paragraph 102 above.

## PART 6. THE OBSERVATION OF THE SPANISH FRONTIERS BY LAND AND SEA

*(Reaffirmation of certain portions of the Annex to the Resolution adopted by the International Committee at the plenary session held on the 8th March, 1937, together with certain additional provisions designed to strengthen the several parts of the Plan set out therein)*

## I. THE ORGANISATION OF THE SYSTEM OF OBSERVATION

(a) *The duties entrusted to the Board*

115. The system of observation of the Spanish frontiers by land and sea, prescribed in paragraphs 122 to 174 below, will be administered by the Board established under paragraph 1 of the Annex to the Resolution adopted by the International Committee on the 8th March, 1937 (hereinafter referred to as the Annex to the Resolution of the 8th March, 1937), when the Observation Plan was first established, the composition of the Board being extended as shown in paragraph 10 above as from the date indicated in paragraph 189 below.

116. The International Committee recognise the importance of ensuring that no ship having the right to fly the flag of any of the participating countries, which has failed to embark an Observing Officer in accordance with the plan, enters a Spanish port engaged in foreign trade, where technical facilities for the unloading of war material exist, without being detected and the fact reported to the International Committee. In order, therefore, to ensure that this object is fully secured, it will be the duty of the Board to take all measures, within the framework of the present plan, which they may consider appropriate and in particular to make arrangements in the manner prescribed in paragraphs 155 to 161 below for officers to be permanently stationed in the eight Spanish ports named in paragraph 159 below, and for the constant presence of Observing Officers in all Spanish ports engaged in foreign trade, where technical facilities for the unloading of war material exist.

117. As soon as possible after the expiry of a period of thirty days from the date on which the provisions of the present Part are brought into operation, the Bureau of the Board shall submit a report on the working of the Observation Scheme as a whole, as now strengthened, with special reference to the objects of the Committee set out above.

118. The Board are empowered to decide all questions relating to the administration of the Observation Plan, but it is the duty of the Board to submit all matters raising questions of principle to the International Committee for decision by that body on behalf of the participating Governments.

(b) *The relations between the Board and the International Council for Non-Intervention in Spain*

119. All contracts and other obligations entered into or incurred as the result of the decisions of the Board are, as provided in paragraph 11 above

in connection with the withdrawal plan, entered into or incurred as the case may be, on behalf of the Board by the International Council for Non-Intervention in Spain, in which are and will continue to be vested the contributions paid by the participating Governments.

(c) *The establishment in certain circumstances on the territories of the participating countries of special Non-Intervention Missions*

120. The participating Governments agree that it is desirable that all possible measures should be taken to ensure direct personal relations between the Board and the appropriate authorities, whether governmental or local, in the countries, the Governments of which are parties to the Non-Intervention Agreement, and for this purpose they agree in principle to receive in their respective countries small *ad hoc* Non-Intervention Missions, to secure this end, such Missions being authorised to discuss with the Governments concerned any matters relating to the application of the Observation Plan. Such Missions will only be despatched by the Board after agreement has been reached on all questions relating thereto between the Board and the Government of the country concerned, through the representative of that Government on the International Committee.

(d) *The duty of the Secretary to the Board to investigate information communicated to him from any source dealing with alleged attempts to commit breaches of the Non-Intervention Agreement*

121. In order that the Board may be in a position to take all possible steps to frustrate any attempts which may be made to commit breaches of the Observation Plan, it will be the duty of the Secretary to the Board to investigate for his personal guidance any information dealing with such attempts which may be communicated to him from any source. This provision in no way modifies the existing procedure of the International Committee in regard to complaints.

## II. THE OBSERVATION OF THE SPANISH LAND FRONTIERS

(a) *The method of securing observation*

122. In view of the fact (a) that a special arrangement was reached between the United Kingdom and Portuguese Governments in March, 1937, regarding the Portuguese frontiers and (b) that the Portuguese Government has agreed as from the date indicated in paragraph 195 below to restore the facilities accorded under the aforesaid Agreement to the British observers established in Portugal in April, 1937, and in view of the fact that the French Government have agreed to restore the facilities prescribed in the Annex to the Resolution adopted by the International Committee on the 8th March, 1937, to the International staff established on the Franco-Spanish frontier under that Resolution, observation of the enforcement of the Non-Intervention Agreement will be re-established on the French side

of the Franco-Spanish frontier as from the date indicated in paragraph 195 below when the facilities prescribed in the Annex to the Resolution of the 8th March, 1937, will be restored to the international staff appointed in accordance with that Resolution. Observation on the British side of the Gibraltar-Spanish frontier will continue to be conducted by the international staff established on that frontier in accordance with the provisions of the Annex to the Resolution of the 8th March, 1937.

123. For the purposes of the Observation Plan, the Franco-Spanish frontier will continue to be divided into zones, each under the control of an "Administrator" responsible for the system of observation in that zone to the "Chief Administrator" who, in turn, will remain responsible to the Board for the whole frontier. Part of the international staff will be stationed at railway and road crossings over the frontier, and part will be equipped on a mobile basis. These officials will work in close collaboration with the appropriate French authorities. As there is only one crossing from Gibraltar into Spain, the necessary observation will continue to be carried out by a small observation staff under the immediate supervision of a Chief Staff Officer responsible to the Administrator stationed at Gibraltar in connection with the Sea Observation Plan as provided in paragraph 134(b) below.

(b) *The facilities accorded to, and the duties of, the Chief Administrator and Administrators under the land observation plan*

124. The facilities accorded to, and the duties of, the Chief Administrator and Administrators have been defined as follows:

- (1) The Chief Administrator, Administrators, and their subordinates, shall enjoy the immunities normally accorded to diplomatic officers, and the Chief Administrator shall have the right of free communication with the Board. Further, the Chief Administrator and the Administrators and their subordinates shall be granted by the Governments of the countries concerned full facilities to enable them to exercise the rights and to discharge the duties assigned to them, and, in particular, those rights and duties enumerated in Sections (2) and (3) below.
- (2) These facilities include—
  - (a) the right of free entry at any time into railway establishments, and similar premises;
  - (b) the right, in accordance with (3) below, of making such inspections as they may think proper in the premises referred to in (a) above, for the purpose of establishing whether any arms or war material are being exported into Spain, whether the goods exported into Spain correspond with the loading documents, or whether foreign nationals are entering that country for the purpose of taking service in the present conflict, in contravention of the Agreement for Non-Intervention;

- (c) the right (i) to call upon the responsible authorities for documents relating to the nature of particular consignments of goods, and (ii) to examine the passports of persons proceeding to Spain;
  - (d) the grant of the same priority for telephone and telegraph services as are accorded to diplomatic officers stationed in, or national officials of, the country in question.
- (3) It will continue to be the duty of the Chief Administrator in France and of the Administrator at Gibraltar—
- (a) when called upon by the Board, to investigate, and to report on, any particular case in respect of which a complaint has been submitted to the Committee by the Representative of a Government which is a party to the Non-Intervention Agreement;
  - (b) whenever, as the result of investigations carried out by the international staff, on their own initiative, he has satisfied himself that a consignment of arms or war material (including aircraft) has been exported into Spain or that foreign nationals have entered Spain for the purpose of taking part either directly or indirectly in the present conflict, in contravention of the Agreement, to submit forthwith identical reports in regard thereto—
    - (i) to the Board;
    - (ii) to an official nominated for the purpose by the Government of the country in which he is stationed.
- (4) In addition to the rights and duties set out above, the Chief Administrator in France and the Administrator in Gibraltar will have the right at all times to communicate direct with the Board on any matter connected with the discharge of their duties.

### III. THE OBSERVATION OF SHIPS HAVING THE RIGHT TO FLY THE FLAGS OF THE PARTICIPATING COUNTRIES PROCEEDING TO PORTS IN SPAIN OR THE SPANISH DEPENDENCIES

#### (a) *The general character of the Sea Observation Plan*

125. All ships having the right to fly the flags of the countries which are parties to the Non-Intervention Agreement (other than naval vessels) proceeding to Spain or to one of the Spanish Possessions (with the exception for the time being of the Spanish Dependencies enumerated in paragraph 138 below), or to the Spanish Zone in Morocco, will, as prescribed in the Annex to the Resolution of the 8th March, 1937,

- (i) subject to such exceptions as are set out in the following paragraphs in this chapter, embark at one of the ports specified in paragraph 134 below two or more "Observing Officers" appointed by the International Committee whose duty it will be to observe the unloading of the ship in Spanish ports, or

- (ii) at the discretion of the Administrator in charge of the Observation Port in question, embark one Observing Officer in the case of small ships, ships carrying cargo in bulk, or ships in ballast, and

the Governments concerned taking such steps as are necessary to require the owners and masters of ships having the right to fly their respective flags to comply with the provisions set out in the following paragraphs.

126. Any ship having the right to fly the flag of any of the countries the Governments of which are parties to the Non-Intervention Agreement will, when not ostensibly bound for a Spanish port, be under an obligation to comply with the procedure indicated in paragraph 125 above, when in the special circumstances set out in paragraph 139 below the ship in question is directed to do so by the Government of the country the flag of which she flies, in response to a request to that effect made by the Board.

127. The phrase "Countries which are parties to the Non-Intervention Agreement" in paragraph 125 above and, wherever it occurs, in paragraphs 128 to 153 below, as well as the phrase "the participating Governments" wherever it occurs in the last-named paragraphs shall be deemed for the purpose of the present Part to include also any Government which may agree to co-operate to render the policy of Non-Intervention in the manner indicated in paragraph 114 above.

(b) *The duties of the Chief Administrator, Sea Observation*

128. The general organisation of the system of observation described in paragraph 125 above will continue to be conducted on behalf of the Board by a Chief Administrator. It will remain the duty of the Chief Administrator to determine the allocation of the Observing Officers as between one Observation Port and another in the light of the day-to-day requirements of each port. Subject to the general direction of the Board, the Chief Administrator is responsible for all questions relating to the discipline and posting of the international staff employed at the Observation Ports.

(c) *The duties of the Administrators in charge of Observation Ports*

129. At each of the Observation Ports enumerated in paragraph 134 below, an Administrator will, subject to the general direction of the Chief Administrator referred to in paragraph 128 above, be responsible for the organisation of the observation plan in that port, and in particular for arranging for the embarkation of Observing Officers on, and their disembarkation from, ships having the right to fly the flags of the countries which are parties to the Non-Intervention Agreement, proceeding to Spanish ports that have called at the Observation Port in question for the purpose of complying with the observation plan.

130. The duties of each Administrator in charge of an Observation Port have been defined as follows:

- (a) to determine in the light of actual conditions how many Observing Officers should be embarked in each vessel calling at the port for the purpose of submitting to observation;
- (b) to notify to the Chief Administrator the names of all vessels bound from his port for Spanish ports which had embarked Observing Officers and the names of those officers;
- (c) to submit a report to the Chief Administrator for transmission to the Board whenever one of the Observing Officers reports to him that he has witnessed in a Spanish port either the unloading of arms or war material, or the disembarkation of foreign nationals entering that country, in contravention of the Non-Intervention Agreement, for the purpose of taking part either directly or indirectly in the present conflict from a vessel in which he was stationed;
- (d) to submit to the Chief Administrator, for the information of the Board, periodical reports in regard to all vessels on which Observing Officers have been embarked and from which no cargo or passengers have been landed in Spanish ports in contravention of the Non-Intervention Agreement.

(d) *The duties imposed on the masters of ships, the facilities granted to, and the duties of, the Observing Officers under the Sea Observation Plan*

131. The duties imposed, or now to be imposed, on the masters of ships having the right to fly the flags of the countries which are parties to the Non-Intervention Agreement, and the facilities granted to, and the duties of, the Observing Officers have been defined as follows:

- (i) the masters of all ships having the right to fly the flags of their respective countries are required, before proceeding to a Spanish port, to call at one of the Observation Ports specified in paragraph 134 below for the purpose of embarking Observing Officers, and, having done so, to give all necessary facilities to those officers to enable them to discharge the duties set out in (c) below, and to disembark such officers at another port indicated by the Administrator in accordance with paragraph 135 below, these facilities to include the right—
  - (a) at any convenient time during the voyage to obtain all necessary information from the master as to the cargo carried which is consigned to Spanish ports, and to inspect papers relating thereto;
  - (b) at any convenient time during the voyage to obtain all necessary information from the master, and, in his presence, or in that of an officer nominated by him for the purpose, to interrogate passengers, officers and crew, proceeding to Spanish

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ports, and to examine the passports of passengers and the identity papers of the officers and crew;

- (c) to be present at the unloading of any goods or disembarkation of any persons in a Spanish port, and to require the master to have opened for inspection any package which is being unloaded, and which the Observing Officer has reasonable grounds for suspecting to contain war material sent in contravention of the Non-Intervention Agreement, and to require the master to have any necessary unpacking, repacking and sealing-up done;
- (ii) The participating Governments will take such steps (whether legislative or other) as may be necessary to impose on the master of ships having the right to fly the flag of their respective countries the duty of satisfying the Administrator of any Observation Port at which, under the Plan, he is required to call as to the Official Number and Port of Registry of his ship.
- (iii) The Chief Administrator, Administrators and their subordinates will be granted by the participating Governments the immunities normally accorded to diplomatic and consular officers; the right of free communication with the Board will be granted to the Chief Administrator, and to Administrators, subject to any directions issued by the Board or (in the last-named case) by the Chief Administrator; and the Chief Administrator, and Administrators and their subordinate staff will be granted full facilities to enable them to exercise the rights and to discharge the duties assigned to them, and, in particular, these officers will be granted the same priority for telephone and telegraph services as are accorded to diplomatic officers stationed in, or to the national officials of, the country in question; and the Observing Officers, when engaged on duty at sea, will be granted the same priority for telephone and telegraph services as are granted to the service messages of the master of the vessel on which they have been embarked;
- (iv) The duties of the Observing Officers, when on board vessels in Spanish ports, will be to take, within the limits of the facilities accorded to them under (i) above, all steps which they may consider necessary to satisfy themselves—
  - (a) whether any arms or war material of the classes covered by the Non-Intervention Agreement are being unloaded; and
  - (b) whether, in contravention of the Non-Intervention Agreement, any foreign nationals intending to take service in the present conflict are being disembarked;
  - (c) on leaving any Spanish port that no passenger or member of the crew, who may have left the ship while in port, has failed to return in contravention of the Non-Intervention Agreement; and



- (d) if they detect any attempted breach of the Non-Intervention Agreement, to refuse to authorise the flying of the Non-Intervention Pennant, or, if the Pennant has already been hoisted, to order it to be hauled down, in which case they will so inform the Commander of any warship which may question or board the ship in question;
  - (v) On each voyage, Observing Officers will note the names of, and other particulars relating to, all ships having the right to fly the flag of any of the countries the Governments of which are parties to the Non-Intervention Agreement, which they may see while in Spanish waters, and immediately on disembarkation will submit a report giving all such particulars to the Administrator of the port at which they are disembarked or, if they are not disembarked at an Observation Port, to the Administrator to whom they first report after disembarkation.
  - (vi) The participating Governments will issue any instructions which may be necessary to require any owners and masters of vessels having the right to fly the flags of their respective countries to take all steps in their power to prevent the landing in a Spanish port, in contravention of the Non-Intervention Agreement, of any arms or war material or passengers which or who the Observing Officers may ascertain are being carried by the vessel in question;
  - (vii) The Observing Officers, on their disembarkation, will immediately submit to the Administrator in charge of the nearest Observation Port a report in writing, stating either that no offence against the Non-Intervention Agreement has been committed by the ship in which they had been stationed, or, if such an offence has been committed, what is the nature of the offence;
  - (viii) The participating Governments will take such legal or other proceedings as may be found appropriate against the owners or masters of vessels in cases indicated in (vii) above, and in due course will submit a report to the Board regarding any penalties inflicted.
132. If the Administrator is unable to supply Observing Officers as prescribed in paragraph 131(i) above, he will hand to the master of the ship a document certifying that he called at the port in order to comply with the plan, and that no Observing Officers were available to be embarked in his ship, the Administrator in all such cases reporting the circumstances immediately to the Board.

(e) *The Observation Ports*

133. It is an essential part of the plan that the Observation Ports at which the ships having the right to fly the flags of the countries which are parties to the Non-Intervention Agreement will embark Observing Officers should be determined in accordance with definite rules, though, in particular cases, or particular classes of case, the Administrators in charge

of the Observation Ports referred to in paragraph 134 below will have the right to make special arrangements for the embarkation of Observing Officers at other ports to suit, as far as possible, the convenience of the shipping concerned from the commercial point of view, subject to the general provisions contained in paragraph 125 above.

(f) *The rules to be followed in the embarkation of Observing Officers*

134. The obligations laid on merchant ships proceeding to Spanish ports (other than the Canary Islands, or Ifni, or Rio de Oro, or Rio Muni, or Fernando Po) will be in accordance with the following rules:

- (a) Ships passing in either direction through the Straits of Gibraltar before calling at a Spanish port will embark their Observing Officers at Gibraltar, unless they have already embarked their Observing Officers at another Observation Port;
- (b) Subject to the provisions of (a) above, ships before calling at a Spanish port will embark Observing Officers at whichever of the undermentioned Observation Ports they prefer, viz.—

Dover,	Oran,
Falmouth,	Sète,
Le Verdon,	Marseilles,
Lisbon,	or
Gibraltar,	Palermo.
Madeira,	

(g) *The disembarkation of Observing Officers*

135. Subject to the approval of the Chief Administrator, the Administrator in charge of each Observation Port has the right to require the master of a ship which has embarked Observing Officers to disembark them at any port which would not entail an unreasonable deviation after the vessel has finally quitted Spanish waters. To this end the master of such a ship will be put under an obligation to disembark the Observing Officers (at the discretion of the Administrator at the port of embarkation) either at the Observation Port nearest to the route that the master intends to follow after leaving Spanish waters, or at any other port which does not entail more than 50 sea miles' steaming in addition to what would have been required if the ship had followed her normal route.

(h) *Special arrangements for regular trades*

136. It has been agreed that shipowners engaged in regular trade with Spanish ports will be permitted, should they so desire, to arrange with the Board for Observing Officers to be stationed continuously on board their vessels, the additional expenditure involved being defrayed by the shipowner concerned. It is the duty of the Board to arrange for such Observing Officers to be changed at reasonably frequent intervals.

(i) *No liability in respect of delay or diversion of ships*

137. (a) It has been agreed that no payment will be made from International Fund No. 1 referred to in paragraph 180 below to shipowners in respect of delay or diversion occasioned by the necessity to embark or disembark Observing Officers, provided that the Administrator in charge of the Observation Port concerned embarks the Observing Officer or Officers, or issues the certificate referred to in 132 above, at the earliest possible moment, and, in any case, not later than four hours after the master or agent of the ship shall have reported to the Administrator in charge of the port that the ship has arrived in the said port.

(b) The proviso referred to in sub-section (a) does not, however, apply in those cases where the special arrangements indicated in paragraph 133 above have been brought into operation.

(k) *Certain provisional exemptions from the plan and special provisions in relation to the Canary Islands*

138. When adopting the Observation Plan on the 8th March, 1937, the International Committee accepted the principle that observation should be applied with equal efficiency to all parts of Spanish territory, with the exception of Ifni, Rio de Oro, Rio Muni, and Fernando Po, which for the time being were excluded, and at the present time remain temporarily excluded, from the scope of the plan. At the same time, the Committee realised that the method of applying observation in the case of the Canary Islands presented special difficulty but agreed that a system of observation in respect of these islands should be brought into operation as soon as possible after the 31st March, 1937. Since that date, a Technical Advisory Sub-Committee have suggested a system of observation in respect of the Canary Islands, but for financial reasons, the Chairman's Sub-Committee have so far not recommended this proposal to the International Committee for adoption. It is therefore proposed that this matter should be considered further by the International Committee as soon as possible after the date on which the plan set out in the present document comes into operation.

(l) *Special procedure applicable in cases of ships ostensibly bound for a non-Spanish destination where the Board consider that there are good grounds for believing that a breach of the Non-Intervention Agreement may be in contemplation*

139. The Governments of the maritime countries, parties to the Non-Intervention Agreement, will take such steps (whether legislative or other) as may be necessary to enable them, on receipt of a request in writing from the Board stating that there are good grounds for believing that a ship having the right to fly the flag of their respective countries intends to proceed to Spain in contravention of the Non-Intervention Agreement, either (a) to require the ship to embark an Officer of the Board before leaving

port, irrespective of the ostensible port of discharge of the ship in question, or (b), if this is not practicable, to issue orders, either direct by wireless or through some appropriate channel, to the Master of the ship directing him to call at a specified Observation Port for the purpose of embarking an Officer of the Board. The requirement to embark this Officer, or to call at a port to do so, does not relieve the ship of liability to embark Observing Officers under the Observation Agreement if she declares her destination as Spain. Where such a ship, prior to the embarkation of an officer of the Board in the manner prescribed in 131 above, declares a Spanish destination and applies for Observing Officers in the manner provided in paragraph 125 above, the provisions set out in the present paragraph and in paragraph 143 below will not apply.

140. Unless and until a ship in which an Officer had been embarked in the manner authorised in paragraph 139 above, does in fact approach a Spanish port with the intention of calling thereat, the only duties of the Officer will be to report from time to time to the Board in regard to the ship's movements, and the only duty of the Master of the ship in relation to that Officer will be to provide him with messing and accommodation in the manner prescribed in paragraphs 144 and 145 below and to give him facilities for the transmission to the Board of the reports referred to above in the manner prescribed in paragraph 131(iii) above. When, however, such a ship does make for a Spanish port, the Officer will, in addition, have all the duties prescribed in paragraph 131(iv) above and the Master of the ship concerned will also have all the obligations prescribed in paragraph 131(i) and (vi) above.

141. Officers embarked in ships in the manner prescribed in paragraph 139 above will be disembarked at any ordinary port of call of the ship in question which the Chief Administrator may prescribe.

142. At no time during the voyage of any ship in which an Officer has been embarked in accordance with the provisions in paragraph 139 above, will the Non-Intervention pennant be flown. For the purpose of this paragraph, a fresh voyage will be deemed to have commenced if the ship calls at an Observation Port for the purpose of obtaining from the Board's Administrator in that port the prescribed number of Observing Officers even if no cargo is discharged in that port.

143. Any loss, damage or expense necessarily suffered or incurred by any person as the direct result of compliance, in the case of any ship, with the provisions of paragraph 139 above will be made good by the Board from the International Fund No. 1, referred to in paragraph 180 below, unless the ship has proceeded to a Spanish port without embarking Observing Officers or has unloaded in such ports goods of the categories referred to in paragraph 2, or disembarked foreign volunteers in Spain in contravention of the Non-Intervention Agreement, or unless, on the date of the request by the Board or on any date subsequent thereto, but prior to the date of the disembarkation of the Officers of the Board, the ship had on board goods or volun-

teers as aforesaid for Spain in contravention of the Non-Intervention Agreement.

(m) *The provision of accommodation and messing at sea for Observing Officers*

144. It has been agreed that the owners and/or the charterers of vessels having the right to fly the flags of the countries which are parties to the Non-Intervention Agreement, proceeding to Spanish ports, will be under an obligation to provide accommodation for the Observing Officers and for Officers of the Board embarked in accordance with paragraph 139 above, equivalent to that normally provided in corresponding vessels belonging to the same nation, for officers such as mates or, in a passenger ship (*i.e.*, a ship having accommodation for more than twelve passengers), for first-class passengers. In cases where there is no accommodation classed as first class, the accommodation to be provided will be of the highest class in the ship.

145. It has been further agreed that shipowners and/or charterers will be placed under an obligation to provide Observing Officers and Officers of the Board embarked in accordance with paragraph 139 above, with messing similar to that provided for the masters of the ships concerned or for first-class passengers, for which payment will be made from International Fund No. 1 referred to in paragraph 180 below at a standard rate or rates to be approved by the International Committee on the recommendation of the Board. Where the Administrator or other Officer who superintends the embarkation of Observing Officers or of Officers of the Board embarked in accordance with paragraph 139 above is of the opinion that the Master of a ship is not in a position to provide the said officers with messing to the value of the prescribed rate or rates referred to above, and where the Master of the ship in question consents to such an arrangement being made, the said Officers will be permitted to provide their own food and mineral waters in lieu of receiving messing from the Master. In such cases, no payments will be made by the Board to shipowners and/or charterers in respect of messing, but the Officers referred to above will be entitled to the use of the ship's galley. The said Officers will receive from the Board a messing allowance equal to the standard rate or rates which otherwise have been payable by the Board to the shipowner and/or charterer in question.

146. The Observing Officers, and the Officers of the Board embarked in accordance with paragraph 139 above, will be carried on the same conditions with regard to liability for life and property as are passengers on the vessel in question.

(n) *Exemption of ships from dues in certain cases*

147. The Governments of the countries in which the Observation Ports are situated have notified the Board of the extent to which they have found it possible to exempt ships calling at their ports merely for the purpose of embarking or disembarking Observing Officers from dues and other charges

(excluding pilotage) normally paid by ships entering those ports, or, alternatively, of the extent to which it has been possible to reduce such charges. In so far as it has been impossible to secure exemption from such charges, the expenditure incurred thereon by ships in the circumstances described above, together with expenditure necessarily incurred on pilotage, forms a charge upon International Fund No. 1 referred to in paragraph 180 below, only when the ship concerned called at the port in question solely for the purpose of complying with the provisions of the Observation Plan.

148. It is the duty of the Administrators in charge of Observation Ports to arrange wherever possible, for Observing Officers to be embarked in such positions as will not necessitate the ships in question incurring either pilotage or dues.

(o) *The conditions in which the Non-Intervention Pennant is to be flown*

149. Ships which have the right to fly the flags of the countries which are parties to the Non-Intervention Agreement may, when proceeding to or from Spanish ports, after having embarked Observing Officers, or having, in lieu thereof, been granted a certificate in the manner prescribed in paragraph 132 above, fly also the Non-Intervention Pennant (particulars of which are given in paragraph 105 above) from the port where the Observing Officers are embarked until their arrival at the port at which the Observing Officers are to be disembarked therefrom, to indicate that they have complied with the procedure laid down in paragraphs 125 and/or 132 above. Ships which have been granted a certificate in the manner prescribed in paragraph 132 above may also fly the Pennant from the port where the certificate was issued to the port, after leaving Spain, from which the certificate and Pennant are to be returned to the relevant Administrator.

(p) *The imposition of penalties in respect of the improper use of the Non-Intervention Pennant*

150. The Board alone is authorised to order the manufacture of the "Non-Intervention Pennant," described in paragraph 105 above, and Observing Officers, when embarked in a ship in accordance with the provisions of paragraph 125 above, will bring with them Non-Intervention Pennants to be flown by that ship in the conditions prescribed in paragraph 149 above. Severe penalties will be imposed by the participating Governments on the masters of ships, having the right to fly their respective flags who fly on their ships such pennants, (a) when in contravention of the Observation Plan there are no Observing Officers on board their ships or (b) when they have not been furnished with a certificate in accordance with paragraph 132 above or (c) when the Observing Officer has, in accordance with paragraph 103 above, refused to authorise the pennant being flown, or (d) when the only international officer on board is an officer specially embarked under the provisions of paragraph 139 above.

(q) *Communication to the Board by the participating Governments of certain particulars relating to ships having the right to fly the flags of their respective countries*

151. The Governments of the maritime countries, parties to the Non-Intervention Agreement, will take such steps (whether legislative or other) as may be necessary to enable them to notify to the Board, through their representative on the International Committee, particulars relating to changes (a) in name or (b) in flag, when made in respect of ships having the right to fly the flag of their respective countries. The Governments concerned will also notify to the Board through the same channel any information which they may obtain from time to time in regard to changes in the silhouette or colour scheme of such ships.

(r) *Communication to the Board by the participating Governments of certain particulars relating to ships calling at ports in their respective countries*

152. The Governments of the maritime countries, parties to the Non-Intervention Agreement, will take such steps (whether legislative or other) as may be necessary to enable them to furnish to the Board, through their representative on the International Committee, weekly reports from all port authorities in their respective countries, giving the name, official number (if known), tonnage, port of registry (if known), and flag (a) of every ship, having the right to fly the flag of any of the participating countries which entered or left that port in the week immediately preceding, and (b) of every Spanish ship which in the same period entered or left such ports.

(s) *Measures to be taken to prevent the evasion of the Observation Plan by the abuse of flag transfers*

153. The Governments of the maritime countries, parties to the Non-Intervention Agreement, will take such steps (whether legislative or other), if any, as may be necessary to enable them, for the period of the present conflict in Spain, to exercise an effective supervision over the transfer of ships to their respective flags with a view to preventing such transfer being effected as a means of evading the provisions of the Observation Plan and of the Non-Intervention Agreement. For this purpose, the Governments concerned will provide at least that ships should only be transferred to the flag of their respective countries if they are owned by nationals of that country or by corporate bodies established under the laws of that country and having their principal place of business in that country. Further, whenever a ship is transferred to the flag of any of the countries concerned, the Government of that country will at once notify the Board, such notification including the name and nationality of the owners of the ship and, in the case of corporate bodies, the name of the body and its address.

- (t) *The disembarkation of Observing Officers for the further discharge of their duties in Spanish ports engaged in foreign trade where technical facilities for the unloading of war material exist*

154. Observing Officers embarked in ships having the right to fly the flag of any of the countries, the Governments of which are parties to the Non-Intervention Agreement, shall on the completion in any Spanish port (other than the ports prescribed in paragraph 159 below) of the duties prescribed in paragraph 131 above disembark from the said ships for the purpose of ascertaining whether at that time there is in the said port any ship having the right to fly the said flags, in which, in contravention of the Observation Plan no Observing Officer has been embarked, and of performing in respect of the said ship the duties set out in the paragraph referred to above, provided that the said officer returns to the vessel in which he was originally embarked immediately prior to her departure from port in question.

155. In order to ensure the constant presence of Observing Officers in all Spanish ports engaged in foreign trade, where technical facilities for the unloading of war material exist, as prescribed in paragraph 116 above, the Board shall have the right to direct one of the Observing Officers on board any ship in which two or more such Officers have been embarked which may be in any port regarded by the Board as falling within the above definition to disembark from his ship and to remain in the said port and there to discharge the duties prescribed in paragraph 131 above and in particular to perform such duties on board any ship having the right to fly the flag of one of the countries, the Governments of which are parties to the Non-Intervention Agreement, which may have arrived in or may enter the said port without previously having embarked an Observing Officer. Observing Officers disembarked in Spanish ports by direction of the Board in the manner prescribed above will remain in the said ports for the purpose of discharging the said duties until the Board can arrange for their re-embarkation.

156. Observing Officers disembarked in Spanish ports in accordance with the provisions of either paragraph 154 or paragraph 155 above will be granted by the Spanish party concerned the rights and immunities normally accorded to diplomatic officers. The Spanish parties have agreed to accord to Observing Officers disembarked in ports under their respective control, in the manner prescribed in paragraph 155 above, all facilities necessary for the discharge by the said officers of the duties prescribed in the said paragraph, and have exchanged with the International Committee mutual assurances to this end. Further, the Spanish parties have agreed to impose upon the Masters of all ships entering all such ports the duty of affording to Observing Officers disembarked in the manner prescribed in the paragraph referred to above all facilities necessary for the discharge by them of the duties with which they are charged.

157. Every Observing Officer so disembarked will at all times carry on his person an identity card (particulars of which will be communicated by



the Board to the Spanish parties concerned), which it will be his duty to show on request to any duly authorised officer of the Spanish party concerned, it being understood that the Spanish parties will furnish to the Board particulars, showing what Spanish Officers are authorised to make such a request.

(u) *The establishment of Non-Intervention Posts in eight prescribed Spanish ports*

158. At four ports in the portion of Spain controlled by each Spanish party there will be established special Non-Intervention Posts, each under the control of a Non-Intervention Agent, to whom will be granted the rights and who will be charged with the duties set out below.

159. The ports at which Non-Intervention Posts will be established in accordance with the provisions of paragraph 158 above are the following:

Bilbao,	Carthagena,
Huelva,	Alicante,
Cadiz,	Valencia,
Malaga,	Barcelona.

160. It will be the duty of the Non-Intervention Agent in each port referred to in paragraph 159 above:

- (i) to verify the flag of every ship entering the port concerned;
- (ii) if the vessel proves to be a ship having the right to fly the flag of any of the participating countries but has not embarked Observing Officers prior to proceeding to Spain, to arrange for the embarkation therein of a Supervising Officer or Officers, of whom there will be eight at the disposal of each Agent to perform the duties assigned to Observing Officers in paragraph 131 above, for such a period as the ship in question is in the said port;
- (iii) to report immediately to the Chief Administrator whenever he embarks a Supervising Officer or Officers in a ship in the manner prescribed in (ii) above, and to submit periodical reports to the Chief Administrator on the working of the Observation Plan in the said port.

161. In order to enable the Agents in the said ports to perform the duties set out in paragraph 160 above, the Spanish parties concerned have agreed to impose upon the Masters of all vessels entering the ports referred to in paragraph 159 above, the duty of affording all facilities to the Agents and their officers necessary for the exercise by them of the duties prescribed in the said paragraph, and to notify to the Non-Intervention Agent concerned the name and flag of every ship immediately upon her entering the limits of the ports concerned and the berth to which she has been assigned; and to inform the Agents concerned of all subsequent changes of berth.

162. The Spanish parties concerned have agreed to grant to the Non-

Intervention Agents and to their officers the rights and immunities normally accorded to diplomatic officers and will afford to the subordinate personnel on the staffs of the said Agents all facilities necessary for the discharge by them of their duties. The names of all officers to whom the said rights and immunities are applicable and the names of all subordinate personnel to whom such facilities are applicable will be communicated in advance by the Board to the Spanish party concerned. The said officers and subordinate personnel will at all times wear a prescribed uniform (particulars of which will be communicated by the Board to the Spanish party concerned) and will at all times carry on their person an identity card, which it will be the duty of such officer or other rank to show, on request, to all duly authorised officers of the Spanish party in question, the Spanish party concerned furnishing to the Agent concerned particulars showing what Spanish officers are authorised to make such a request.

163. The participating Governments agree to take such measures, whether legislative or other, as may be necessary to impose on the Masters of the ships having the right to fly the flag of their respective countries the following duties:

- (i) to give all necessary facilities to the Supervising Officers or other officers to enable the said officers in accordance with the provisions of paragraphs 154, 155 or 158 above as the case may be to verify the flag of the ship in question and if the vessel proves to be entitled to fly the flag of any of the countries parties to the Non-Intervention Agreement, to ascertain whether she has an Observing Officer on board;
  - (ii) in the event of a vessel having the right to fly the flag of one of the countries, the Governments of which are parties to the Non-Intervention Agreement, being shown as a result of the examination referred to in (i) above to have improperly entered a Spanish port without having previously embarked an Observing Officer, to permit the embarkation in his ship of a Supervising Officer or other officer as prescribed in the paragraphs referred to in (i) above to perform the functions assigned to Observing Officers in paragraph 131 above;
  - (iii) to provide any Supervising Officer or other officer embarked in accordance with (ii) above with accommodation and messing in the manner laid down in paragraphs 144 and 145 above.
- (v) *Measures to be taken by the Board and the Spanish parties to secure the smooth working of the portion of the sea observation plan under which officers of the Board will be permanently stationed or temporarily disembarked in Spanish ports*

164. The Spanish parties concerned have undertaken to render all possible assistance to Observing Officers temporarily disembarked in Spanish ports in accordance with paragraphs 154 and 155 above and to the Agents and their staffs permanently stationed in Spanish ports in accordance with

paragraph 158 above in the performance of the duties assigned to the said officers and subordinate personnel, and have exchanged with the International Committee mutual assurances to this end.

165. The Board will co-operate in every way with the two Spanish Parties to secure the smooth and effective working of the portion of the Observation Plan set out in paragraphs 154 to 161 above, and in particular with regard to the application of the mutual assurances referred to in paragraph 164 above and to the settlement of any problems of an analogous character not expressly provided for therein which may arise in the course of the working of the Plan.

166. On learning from either Spanish Party or from any of the Agents or from any officer temporarily disembarked in a Spanish port in accordance with paragraphs 154 or 155 above of any matter which it may have been found impossible to settle by direct negotiation between the Agent concerned and the Spanish party concerned, the Board will at once report such matter to the International Committee, with a view to the settlement of the question at issue in a manner satisfactory both to the Board and to the Spanish Party concerned.

(w) *Duty of the Board to communicate to the International Committee certain particulars of the movements of non-Spanish shipping in Spanish ports*

167. On and after the date on which the provisions of the present Part are brought into operation, it will be the duty of the Board each day to circulate to the International Committee a return, showing in respect of each Spanish port the name and flag of each ship having the right to fly the flag of one of the countries, the Governments of which are parties to the Non-Intervention Agreement :

- (a) reported in the twenty-four hours immediately preceding as having entered or left the said port,
- and
- (b) known to have been lying in the said port during the same period.

IV. THE ESTABLISHMENT OF A SPECIAL RÉGIME IN THE TERRITORIAL WATERS OF THE COUNTRIES ADJACENT TO SPAIN

168. Where international observation is exercised over a land frontier limitrophe to Spain (*i.e.*, on the Franco-Spanish and Gibraltar-Spanish land frontiers), the responsibility of the Chief Administrator (or Administrator as the case may be) extends not only along the whole land frontier concerned, but also over the territorial waters adjacent to the Spanish territorial waters concerned. The Chief Administrator in France (in the case of the Franco-Spanish frontier) and the Administrator, Gibraltar (in the case of the Gibraltar-Spanish frontier) are therefore responsible respectively for the organisation of international observation over sea-borne traffic passing through the

territorial waters concerned. The Chief Administrator in France and the Administrator, Gibraltar, after discussing the problem in the light of the local conditions on the frontier concerned with the appropriate national authorities, will submit as soon as possible to the International Committee through the Board reports showing (a) in general how they propose to organise on the frontiers for which they are responsible the extension of the Observation Plan indicated above, and (b) the number of additional Observing Officers required for the discharge of these duties.\*

169. Further, the Governments of the countries adjacent to Spain will continue themselves to exercise observation over ships passing direct into Spanish territorial waters from the territorial waters of the said countries. The said Governments will notify to the International Committee the steps which they have severally taken to give effect to this arrangement, and will communicate to the Committee particulars regarding any infringements of the Non-Intervention Agreement and of the Agreements supplementary thereto which they may detect in this manner.

V. PRELIMINARY MEASURES DESIGNED TO ENABLE THE INTERNATIONAL COMMITTEE TO ESTABLISH A SYSTEM OF AIR OBSERVATION OVER THE SPANISH LAND AND SEA FRONTIERS, IF THIS SHOULD BE FOUND TO BE PRACTICABLE

170. The participating Governments agree in principle that there should be established a system of air observation over the Spanish frontiers if, on further investigation, it is found possible to evolve a system of air observation which would be practicable and effective as regards both sea and land frontiers. As a preliminary to the establishment of such a system, the International Committee agree to appoint two Air Staff Officers, one to be attached to the staff of the Chief Administrator Sea Observation, and the other to the staff of the Chief Administrator in France.†

171. The Air Staff Officers referred to in paragraph 170 above will, under their respective Chief Administrators, be charged with the duty of examining the practicability of establishing an effective system of observation over air traffic entering Spain across the sea frontiers and the Franco-Spanish land frontier respectively within the scope envisaged in paragraph 6 of the United Kingdom Government's plan of the 14th July, 1937.‡ The Air Staff Officer

\* The Portuguese Representative has stated that the Portuguese Government accept in principle the suggested extension of the Anglo-Portuguese Agreement in the manner discussed above.

† The Portuguese Representative has stated that the Portuguese Government will be prepared to study with the United Kingdom Government the problem of establishing an Air Observation Scheme in respect of the Portuguese-Spanish frontier.

‡ (NOTE.—Paragraph 6 of the United Kingdom Government's plan of the 14th July, 1937, reads as follows:

"The Committee to consider further the question of the employment by the two parties of foreign aircraft which enter Spain under their own power, and to examine in particular the possibility of requesting the two parties to accept foreign observers in specified aerodromes in Spain.")

attached to the staff of the Chief Administrator Sea Observation will be charged also with the duty of examining the practicability of establishing an effective system of observation over air traffic entering Spain across the Gibraltar-Spanish land frontier.

172. In carrying out the duties prescribed in paragraph 171 above, the Air Staff Officers will work in close conjunction with the appropriate national authorities of the countries principally concerned.

173. On the conclusion of their studies, each Air Staff Officer will submit to the Chief Administrator to whose staff he is attached a report on the possibility of devising practical and effective steps which would enable the Board to ascertain the direction and volume of air traffic across the sea and land frontiers of Spain, in so far as such air traffic is in contravention of the Non-Intervention Agreement.

174. The reports referred to in paragraph 173 above will be submitted by the Chief Administrators to the Board, with such comments as they may desire to make. The Board will then transmit these reports to the International Committee, with a view to the establishment by the Committee, as provided in paragraph 170 above, of a practicable and effective air observation plan over the Spanish land and sea frontiers if the reports indicate that this is possible.

#### VI. THE INTERNATIONAL STAFF REQUIRED FOR THE OBSERVATION OF THE SPANISH FRONTIERS BY LAND AND SEA

175. The Board is authorised to maintain the following establishment of Observing Officers for the following parts of the Plan.

(a) *For the Franco-Spanish frontier.*

- (i) In the summer phase, extending approximately from the 1st May to the 30th September:

144 Observing Officers (exclusive of six Senior Observing Officers).

- (ii) For the winter phase, extending approximately from the 1st October to the 30th April:

134 Observing Officers (exclusive of six Senior Observing Officers).

(b) *For the Gibraltar-Spanish frontier.*

6 Observing Officers.

(c) *For the sea observation plan.*

560 Observing Officers.

176. The establishments provided in paragraph 175 above are in each case exclusive of the Chief Administrators and Administrators and their personal and administrative staffs (Chief Staff Officers, Chief Observing Officers, Senior Observing Officers, and Paymasters) and their subordinate office staffs.

177. All officers and other ranks in the observation service will be recruited from such countries and will be appointed on such conditions of

service and at such rates of remuneration as the Board may from time to time determine.

178. It has been agreed that the officers in charge of the main divisions of the plan should be instructed to prepare from time to time for submission to the Board reports describing the working of the portions of the plan for which they are severally responsible, and setting out their recommendations in regard to staff requirements. If either of the Chief Administrators or the Administrator at Gibraltar is of the opinion that, even with the full staff provided in the scheme now agreed upon, he would not have at his disposal a sufficient number of officials for the proper discharge of his duties, the International Committee will take such steps as may be found, on examination, to be necessary to ensure the efficient operation of the portion of the plan in question.

VII. THE COST OF THE OBSERVATION PLAN, OTHER THAN THE EXTENSION SET OUT IN PARAGRAPHS 154 TO 161 OF THE PRESENT PART, AND THE FINANCIAL ARRANGEMENTS REQUIRED IN CONNECTION THEREWITH

(a) *The cost of the plans of land and sea observation and the method adopted to finance them*

179. The participating Governments\* have agreed to contribute in certain proportions towards the cost estimated at £815,474 per annum of the plans of land and sea observation, as set out in Sections II to V of the present Part other than that portion of the plan set out in paragraphs 154 to 161 above.

(b) *International Fund No. 1*

180. The contributions by the participating Governments referred to in paragraph 179 above are payable into an International Fund, which will be known in future as "International Fund No. 1." It has been agreed that

\* At the time when the Observation Plan was first under consideration the United Kingdom Government undertook to contribute towards its cost on the same scale as the French, German, Italian and U.S.S.R. Governments. When subsequently the United Kingdom Government accepted an invitation by the Portuguese Government to observe the carrying out of the Non-Intervention Agreement in Portugal, it was arranged that the United Kingdom Government and the Portuguese Government should assume direct responsibility for the cost of the special arrangement so made, 80 per cent. of the cost being borne by the United Kingdom Government and 20 per cent. by the Portuguese Government. The liability so incurred by the United Kingdom Government was estimated at £64,000 per annum, and it was agreed that the United Kingdom contribution to the International Fund (£143,680) should therefore be reduced by the sum of £64,000 to the sum of £79,680, subject to any adjustment that might be necessary in the event of the expenditure actually incurred by the United Kingdom Government under the Anglo-Portuguese Agreement amounting to less than the estimated sum of £64,000 per annum. The contribution of £3,408 per annum made to the International Fund by the Portuguese Government is made exclusively in respect of the Sea Observation Plan. In addition, the Portuguese Government defray 20 per cent. of the cost of the special régime established under the Anglo-Portuguese Agreement. The estimated expenditure under this head amounts to £16,000. The total expenditure by the Portuguese Government in respect of Non-Intervention amounts, therefore, to the sum of £19,408.

payments should be made from this Fund in the manner prescribed in paragraph 119 above.

181. Payments in respect of the contributions referred to in paragraph 179 above will be made monthly on the 8th of each month in such a manner that at all times a reserve of one and one-half months' contributions is held by International Fund No. 1.

182. It has been agreed that such arrears, if any, as may be due by participating Governments to International Fund No. 1 on the date of the final adoption of the Resolution to which the present document forms an Annex will be paid by them to the Fund immediately thereafter.

183. It has been agreed that if any Government party to the Non-Intervention Agreement decides to withdraw from the Observation Plan set out in the present part, the said Government shall be at liberty to do so, when, having given notice in writing to the Secretary to the Board of such intention, they pay into International Fund No. 1 any sums which on the date of such notice may be outstanding thereto together with a sum equal to three months' of their agreed contribution, it being understood that if as a result of the withdrawal of such Government or for any other reason the plan is determined before the expiry of the period covered by the payment prescribed above, the said Government shall be entitled, with the other Governments parties to the Non-Intervention Agreement, to share in any unexpended balance which may remain in the said International Fund on a basis proportional to contributions paid by them therein since the 8th March, 1937.

VIII. THE COST OF THE EXTENSION OF THE SEA OBSERVATION PLAN SET OUT IN PARAGRAPHS 154 TO 161 OF THE PRESENT PART AND THE FINANCIAL ARRANGEMENTS REQUIRED IN CONNECTION THEREFOR

(a) *The cost of the extension of the Sea Observation Plan*

184. The Governments of the United Kingdom, France, Germany, Italy and the U.S.S.R. have agreed jointly to defray the cost of the extension of the Sea Observation Plan set out in paragraphs 154 to 161 above, and in this connection have each agreed to pay to the Board a sum of £19,377 on the first payment date (in order to enable the Board to bring the said extension into force), and thereafter each to pay at intervals of one calendar month from the date of the first payment a sum of £4,668, the said payments to be made to the Board in sterling in London.

(b) *The establishment of International Fund No. 4*

185. The contributions payable by the Governments named in paragraph 184 above will be paid into an international fund to be known as "International Fund No. 4," which will be administered in the same manner and in accordance with the same principles as those already adopted in the administration of International Fund No. 1, the same officer acting as Accounting Officer to both funds.

(c) *Adjustments to be made between International Fund No. 4 and International Fund No. 1*

186. In order to avoid unnecessary complications of an accountancy character, the participating Governments have agreed that the cost of the miscellaneous management services to be undertaken by the Board in connection with the extension of the Sea Observation Scheme set out in paragraphs 154 to 161 above (*e.g.*, the part-time services of officers appointed in connection with the remaining portion of the Observation Plan, share of rent, heating and lighting of existing accommodation, share of postage, telephones, and other services certified by the Accounting Officer to International Fund No. 1 as being common services), shall be assumed to amount to 1 per cent. of the sums issued monthly from International Fund No. 4, and that a sum so calculated shall be transferred from the said Fund to International Fund No. 1 in repayment of the cost of such management services. Expenditure at the headquarters of the Board (including the offices of the Chief Administrator for Sea Observation) certified by the Accounting Officer of International Fund No. 4 as directly attributable to the extension of the sea observation plan referred to above (*e.g.*, sums attributable to salaries and allowances of officers employed in connection with the said extension of the plan, rent of additional accommodation hired as the result of the adoption of the said extension, &c.) will form a charge on International Fund No. 4.

PART 7. THE DATES ON WHICH THE SEVERAL PARTS OF THE PLAN SET OUT IN THE PRESENT DOCUMENT WILL BE BROUGHT INTO OPERATION

I. THE EXTENSION OF THE NON-INTERVENTION AGREEMENT TO PROHIBIT THE DEPARTURE, &c., FOR SPAIN OF PERSONS WHOSE ACTIVITIES IN THAT COUNTRY WOULD BE IN ANY WAY SUSCEPTIBLE OF PROLONGING OR EMBITTERING THE PRESENT CONFLICT

187. The Supplementary Agreement as set out in Part 2 of the present document providing for the further extension of the Non-Intervention Agreement to prohibit the departure, &c., for Spain of persons whose activities are susceptible of prolonging or embittering the present conflict will take effect as from a date to be fixed by the International Committee, that date not being later than the date and hour fixed by the Committee in accordance with the provisions of paragraph 195 below for the restoration of observation on the Franco-Spanish and Portuguese-Spanish frontiers.

II. THE EXTENSION OF THE NON-INTERVENTION AGREEMENT TO PROHIBIT THE CARRIAGE FROM ANY PORT TO SPANISH PORTS BY SHIPS OF THE PARTICIPATING COUNTRIES OF ARMS OR WAR MATERIAL INCLUDED IN THE PROHIBITED LIST

188. The extension of the Non-Intervention Agreement to prohibit the carriage from any port to Spanish ports by ships of the participating coun-



tries of arms or war material included in the prohibited list will come into operation on a date to be determined by the International Committee, as soon as they have been informed by the representatives concerned that the Governments parties to the Non-Intervention Agreement have taken such steps (whether legislative or other) as are necessary to enable them to give effect thereto.

### III. THE RECONSTITUTION OF THE BOARD

189. The Board will be reconstituted by the addition thereto of a Portuguese Representative as from the date of the final adoption of the Resolution to which the present document forms an Annex.

### IV. THE ENTRY INTO FORCE OF THE PLAN FOR THE WITHDRAWAL OF FOREIGN VOLUNTEERS FROM SPAIN

190. The measures necessary to bring the withdrawal plan into operation will be commenced immediately upon the final adoption by the International Committee of the Resolution to which the present document forms an Annex (the necessary funds being made available to the Board simultaneously therewith) and will be carried out in the successive stages indicated in paragraphs 14 to 22 above.

191. When the preliminary measures referred to in paragraph 190 above have been taken, the International Committee will notify the Spanish parties that the actual withdrawal will be commenced on the date prescribed in the time-table set out in paragraph 22 above.

### V. THE RECOGNITION BY THE INTERNATIONAL COMMITTEE THAT THE TWO PARTIES IN SPAIN POSSESS A STATUS WHICH JUSTIFIES THEM IN EXERCISING BELLIGERENT RIGHTS AT SEA

192. The participating Governments agree that the International Committee shall have authority on their behalf to adopt a Resolution placing on record their opinion that "the arrangements for the withdrawal of foreign nationals are working satisfactorily, and that this withdrawal has, in fact, made substantial progress" within the meaning of paragraph 8(iii) of the proposals submitted by His Majesty's Government in the United Kingdom on the 14th July, 1937, when the conditions set out in paragraph 193 below are satisfied. Further, the participating Governments agree that the International Committee shall have authority, simultaneously with the final adoption of the Resolution referred to above, to request the Chairman to notify both Spanish parties through the appropriate channel that each of the Governments parties to the Non-Intervention Agreement recognises that both of the said Spanish parties possess a status which justifies them in exercising belligerent rights at sea in the manner indicated in Part 5 of the present document.

193. The participating Governments further agree that, for the purpose

of paragraph 192 above, the International Committee shall be authorised to place on record their opinion that "the arrangements for the withdrawal of foreign nationals are working satisfactorily and that this withdrawal has, in fact, made substantial progress," when 10,000 volunteers have been evacuated in the manner prescribed in paragraph 16 above from whichever Spanish party the Joint Commission in their report (Report "A") referred to in paragraph 34 above find to have the smaller number of foreign volunteers, and consequently when a proportionately larger number of foreign volunteers have been similarly evacuated from the Spanish party found by the Joint Commission in the report referred to above to have the larger number of foreign volunteers.

#### VI. THE RECONSTITUTED OBSERVATION PLAN

194. The portions of the Observation Plan adopted by the International Committee in accordance with the Resolution of the 8th March, 1937, which are still in active operation, will remain in such operation until otherwise determined.

195. The facilities prescribed in the Annex to the Resolution of the 8th March, 1937, will be restored by the French Government to the International Observation Staff on the Franco-Spanish frontier on the day on which the Commissions begin the actual counting of the foreign volunteers, it being understood that this date may be expected to be about fifteen days after the date of the final adoption of the Resolution, of which the present document forms an Annex. This date, which will have been reported by both Commissions to the Board in accordance with the provisions of paragraph 28 above, will be notified by the Board to the International Committee to enable the necessary arrangements to be made for the International Observation Staff to be moved to the frontier in time to enable them to resume observation on the date so reported. Observation on the frontier will remain in operation for a period of 30 days (*i.e.*, to the forty-fifth day after the final adoption of the Resolution of which the present document forms an Annex), when it will lapse if the withdrawal of foreign volunteers has then not actually commenced, it being understood, however, that the French Government will be prepared to agree to a further period of grace of (say) ten days, if the failure to begin the actual withdrawal of foreign volunteers on the forty-sixth day, as prescribed in paragraph 17 above, is shown to be due to unavoidable technical difficulties.\*

196. The International Committee recognise the importance of securing

\* The Portuguese Representative has stated that the Portuguese Government will restore the facilities prescribed in the Anglo-Portuguese Agreement referred to in paragraph (2) of the Resolution to which the present document forms an Annex to the British observers on the Portuguese-Spanish frontier on the same date and at the same hour as that on which the facilities prescribed in the Annex to the Resolution of the 8th March, 1937, are restored to the International observation staff on the Franco-Spanish frontier.

that the measures set out in Part 6 of the present document to strengthen and restore the plan for the observation of the Spanish frontiers should be brought into operation in such a manner as to maintain at all times an equivalence between the observation established on the land and sea frontiers respectively. It will therefore be the duty of the Board in the period immediately following the date on which the present document is finally adopted by the International Committee—during which period the Board will be recruiting additional staff to perform the duties now prescribed for the first time—to employ the Observing Officers in their service on that date in such a manner as to give full effect to the provisions of paragraphs 154 to 163 above on a date not later than that on which, in accordance with paragraph 195 above, international observation will be restored on the Franco-Spanish frontier.

8. TEXT OF THE REPLY OF THE SPANISH GOVERNMENT ACCEPTING THE PLAN FOR THE WITHDRAWAL OF VOLUNTEERS, AUGUST 2, 1938<sup>9</sup>

(Translation)

1. The Spanish Government has examined with the attention and the care which the importance of the matter requires, the project of the Resolution destined to be adopted by the Non-Intervention Committee "reaffirming and extending the non-intervention accord, providing for the withdrawal of foreign volunteers from Spain, for the grant in certain circumstances of belligerent rights to the two parties in Spain, and for the observation of the Spanish frontiers by land and sea." The result of that examination, undertaken in a high spirit of international collaboration and in the decided intention of bringing to the realization of the projected measures the greatest possible guarantees of efficacy, will be found summed up in the following observation:

I. PLAN FOR THE WITHDRAWAL OF FOREIGNERS

2. The Spanish Government believes that it can affirm in a justified fashion that the primary and substantial objective of the plan elaborated with such details and such minutiae by the Non-Intervention Committee, is to assure the withdrawal of foreigners who, either directly or indirectly, are participating in the struggle which is going on in Spain. The provisions relative to the main point are to be found in the fourth part of the Annex to the project of the resolution, and the Spanish Government has the satisfaction of declaring that, from the present, for its part it accepts these provisions and that should the occasion arise it will collaborate loyally in their effective application. Meanwhile, the Spanish Government, in the same interest of the proper functioning of the plan, considers itself obliged to submit to the Committee the following observations:

<sup>9</sup> Text in French in *Journal des Nations* (Geneva), Aug. 3, 1938, from the *Agence Espagne*.

3. The first observation which the Spanish Government desire to put forward, relative to the fourth part of the Annex, refers to the operation of the counting confided to the two Commissions which must operate for that purpose in the territory of the Government and in that dominated by the rebels respectively. The Spanish Government supposes that the manner and the method under which the Commissions must proceed to that operation of counting will be the object of "general instructions" provided for in paragraphs 9 and 23. Nevertheless, it prefers to draw attention today to the absolute necessity that the enumeration present a serious minimum guarantee that the Commissions shall not be limited to collecting and to classifying the information and the details which they will receive from the respective authorities, but that they may by themselves proceed to any investigations, to any inquiries which they shall judge to be necessary for acquiring certainty that they are in possession of information conforming to reality. The contrary would have the result of taking for a point of departure a fiction and of seeing the counting converted into a statistical semblance devoid of consistency and of truth. The Spanish Government has deemed it prudent to make these observations, bearing in mind particularly the ancientness of the wording of paragraphs 25 and 26 of the Plan, ancientness accentuated again by the reference erroneously made—in the letter addressed by the Secretary of the Non-Intervention Committee to the under-secretary of State of the Foreign Office—in paragraph 25, where it is mentioned as a fact that the said paragraph contains a provision according to which each of the Spanish "parties" must collect preliminary information relative to the number and to the classification of foreign volunteers in its service, in such a way that the information can be studied by the Commissions immediately after their arrival in the respective territories. The Spanish Government does not doubt that this point will be entirely clarified in the "general instructions" that the Committee will give and, for its part, and under reservation of reciprocity, it declares itself disposed to concede to the Commission which will come into its territory, as well as to its authorized agents, ample facilities for verifying themselves the scrupulous exactitude of all information which will be given to them by the authorities of the Republic.

4. A second observation relative to the plan of withdrawal proper (fourth part of the Annex), concerns the provision (paragraph 14) according to which, for the purposes of the evacuation of the foreigners, two evacuation zones will be established in each of the territories, government and rebel: those in the territory of the Spanish Government in proximity to the ports of Palamos and Cartagena, those in rebel territory near to the ports of Malaga and Cadiz. Although the capacity of these "zones" need not perforce be the same, it is most apparent that the Committee, in foreseeing the establishment of the same number of zones in each territory, has taken for its basis for the elaboration of the plan, the hypothesis that the number of foreigners that it will be necessary to evacuate from one side and from the other will be approximately the same. Given the differences of opinion

which exist on this important matter, an impartial point of view should have counselled fixing the number of "evacuation zones" in each territory proportionately to the number of foreigners found in each of them.

5. If one unites this point with that which has been provided relative to the number of foreigners which must be evacuated conclusions are arrived at which justify an even greater concern. As a matter of fact, conformable to what is provided in the Plan (paragraph 14), the "party" having the fewer foreigners must evacuate a thousand a day; the other party, a number correspondingly proportionate on the basis of the total number of foreigners counted in each territory. On the other hand, the "calendar" established in the plan for the development of the operation in its ensemble (paragraph 22) assigns a period of 50 days for the evacuation properly speaking. This means that the provisions of the Plan would find a perfect adaptation if, for example, the census indicated 50,000 foreigners on each side. In this case, the daily evacuation would be 2,000 foreigners, 1,000 for each territory and 500 for each of the evacuation "zones." And the evacuation would last exactly the 50 days provided for by the calendar. But, what would be arrived at if, for example, the census produced a result more nearly like that which the Spanish Government considers to be the real situation: 10,000 foreigners, in round numbers, with the Government, and 100,000 with the rebels? If such was the result of the counting the evacuation would have to be made on the basis of 1,000 men per day on the side of the Government (500 for each of the evacuation "zones"), 10,000 per day on the side of the rebels (5,000 for each of the two evacuation "zones"); and the evacuation would be terminated in ten days.

The practical consequences of such a result would be simply catastrophic for the application of the Plan. According to this, the evacuation of the "zones" for the embarkation of the foreigners would commence five days after the first contingent to be evacuated had arrived there, that is to say, the "zones" would have to have a capacity for five contingents a day. This implies that in the hypothesis that we have formulated, those in the rebel territory would have to be able to contain 25,000 evacuees each. But, the "aide-memoire" which accompanies the Plan and which contains the mutual securities for its execution which must be exchanged between the "parties" and the International Committee, says that the zones must be able to hold 3,000 evacuees. And if it is true that one can foresee the case where, as a result of a great disproportion between the number of foreigners found to be on each side, it would be necessary to augment the capacity of the "zones" or their number on the side where there are the most foreigners, it seems difficult to admit that an augmentation in the proportion of 3 to 25 in each zone could be realized when all is already fixed for the effective commencement of the evacuation without causing profound disorders in the application of the Plan as a whole.

The Spanish Government cannot hide its fear and its concern in the face of the grave eventuality that the consequences themselves of a census which

turns out to be far off the hypothesis which seems to have served as the base of the Plan would exercise a certain moral influence on the Commissions and insensibly this would lead them to obtain results not very far removed from those before stated. Although the Spanish Government may have the most lively hope that the Commissions will accomplish their mission with the maximum rigor and scrupulousness, and that it would place confidence in them in advance, it has not wished to pass in silence the observations which precede, made in the same spirit of collaboration with which it declares itself disposed to co-operate in the execution of the Plan.

6. The Spanish Government deems it necessary to underline the extraordinary importance that, in its opinion, belongs to the question of "categories." To assure that which constitutes the essential purpose of the Plan, it is indispensable to take into account not only the number but also the kind of "volunteers." And the question being examined at the outset from this point of view, counseled by the same objective interest which has preceded it, is of an easier application, inasmuch as the evacuation of a limited number of specialists would present fewer practical obstacles than that of masses of non-specialized combatants. That is to say that in proceeding from this conclusion, one could succeed in obtaining from the beginning a result of real and positive value with the minimum of difficulties. In consequence, the Spanish Government would suggest that in the "general instructions" which will be drawn up by the Committee for the Commissions charged with the counting and the withdrawal, it be mentioned that the withdrawal ought to commence with the qualified technical elements, particularly aviators and other aviation personnel, artillerymen and other technical combatant personnel, general staff, etc.

7. The Spanish Government takes note of the provision contained in paragraph 52 of the Plan, of which the just interpretation must, in its opinion, be conducive to a solution conformable to the point of view which it has always maintained regarding the problem created by the Moroccan forces recruited by the rebel forces in the Spanish Zone of Morocco. The international texts relative to Morocco have always taken care to preserve the international unity of the empire, and, that which is its natural consequence: the unity of the Moroccan nationality. On this account, the Spanish Government hopes that in virtue of paragraph 52 of the Plan, aforementioned, all Moroccan citizens, without distinction of origin, will be subject to withdrawal from Spain in their apparent quality as foreigners.

8. Having always in view that which constitutes the principal objective of the Plan, that is to say, the elimination of all foreign participation in the Spanish strife, the Government cannot explain the reason for the exception made in the withdrawal in favor of foreigners incorporated in the Foreign Legion prior to the 18th of July, 1936. This, in other words, will constitute in practice a great difficulty supplementary and superfluous to the operations of counting by the Commissions. In consequence, the Spanish Government permits itself to suggest the suppression of that exception maintaining in

all its purity the principle according to which *all* foreigners, without exception, who are participating in the Spanish strife must be submitted to withdrawal.

9. The Spanish Government does not wish to bring to an end the examination of the fourth part of the annex of the project of the resolution, which it accepts with the observations which it has just formulated, without drawing attention to the inexplicable anomaly of not having extended the withdrawal of foreigners to include material of war. The latter, bestowed each time with a greater lavishness on the service of the rebels by the states which have induced them to rebellion and which have not ceased to support them since the beginning by sending aviation, tanks, artillery, etc., this latter, then, constitutes in reality the most important aspect of the action of Italy and of Germany in Spain. To withdraw the "volunteers" while leaving to the interventionist States the open possibility of continuing to intervene with their material of war, to renew and to augment, under cover of the lacunae which in this regard the Plan presents, this implies, in addition to being a surprising contradiction, leaving the problem of foreign intervention in Spain half settled.

## II. MARITIME CONTROL

10. Disposed, in principle, to give the necessary facilities for the application of the new form of maritime control, which appears essentially to be regulated in paragraphs 154 to 157 of the Plan, the Spanish Government deems it indispensable to submit to the consideration of the Non-Intervention Committee the following considerations:

11. No one, examining with an impartial spirit the organization of the international control of the land and maritime frontiers of Spain, which has been projected by the Committee, can deny that the control of the land frontier presents guarantees of efficacy incomparably superior to those which the control of the maritime frontier offers. And if one takes account of the fact that the furnishing of war material to the rebels is done by preference by the maritime route, no one will be surprised that the Spanish Government considers the system of control, in its ensemble, as profoundly partial toward it and that as a result of this, certain moreover of seeing its own anxiety shared by the Committee, it makes every endeavor to assure to the maritime control a degree of effectiveness as nearly like that of the land control as possible.

12. The Plan provides for an effective control in 8 Spanish ports: 4 in the territory of the Government and 4 in rebel territory. The 4 Governmental ports in which the effective control would exist would be: Cartagena, Alicante, Valencia and Barcelona. The 4 ports in the territory dominated by the rebels: Bilbao, Huelva, Cadiz and Malaga. The Spanish Government cannot understand how a proposition of that nature could possibly be formulated. Its injustice reaches such proportions that it is enough to warrant the greatest reservations. The Spanish Government does not doubt for an

instant that the Non-Intervention Committee will take account of its reasonable observations and that it will submit to a revision a proposition of which the practical result would be the application of a unique system of effective maritime control provided by the Plan for all of the great ports in the control of the Government, while a large number of the ports having a great amount of traffic in rebel territory would be exempt, that is to say: Algeciras, Ceuta, Corunna, Ferrol, Gijon, Melilla, Palma, Palmas, Pasages, Santander, Santa Cruz de Tenerife, Seville, etc.

13. Besides the permanent posts of observation which would be established in these 8 ports, the Plan provides a system designed to assure the "permanent presence of an observer" of the Committee in the "ports devoted to international commerce in which there are facilities for the discharge of material of war."

(a) The Government of Spain does not think that the system of "permanent presence" offers equivalent guarantees to those that they can offer the permanent posts which would be created in the 8 ports and, moreover, it would like to receive more detailed information regarding the manner in which the system would function in practice. And also regarding the motives for which the Non-Intervention Committee considers that this system offers sufficient guarantees in order to justify its acceptance.

(b) But what causes the greatest concern to the Spanish Government is the limitation which it has been determined, without any doubt, to establish in providing that this system of permanent presence would be applied to the "ports devoted to the international traffic and offering technical facilities for the discharge of material of war."

The Spanish Government urgently desires to know the interpretation and the sense which is attributed to that phrase by the Non-Intervention Committee, and whether its intention is to precede the re-establishment of the maritime control by an inquiry destined to demonstrate what are the Spanish ports which belong in the category thus defined. It is a matter, as everyone will understand, of questions whose extreme practical value is very considerable for the reason that they are not previously clearly determined.

(c) Finally, the Spanish Government reiterates that it is of the opinion that the system of maritime control must be applied to the Canary Islands in the same manner as to the rest of the national territory, and simultaneously.

### III. AERIAL CONTROL

14. It is public and notorious that in the matter of aviation there exists a situation patently unfavorable to the Spanish Government, for the simple reason that the countries which are giving their aid to the rebels can, in complete freedom, send into Spain by direct flight the airplanes which they consider to be necessary. This is why the absence of any provision for the establishment of an effective aerial control has been constantly considered



by the Spanish Government as one of the clearest and most characteristic signs of the enormous injustice which has been represented by the system of non-intervention. The Plan elaborated by the Committee contains some provisions relative to aerial control (paragraphs 170 to 174). These provisions stipulate the designation of aviation officers, attached to the system of maritime and land control, charged with "examining" the practical possibility of establishing an effective system of observation of aerial traffic proceeding toward Spain by the naval frontiers or the Franco-Spanish frontier respectively, for the purpose indicated by paragraph 6 of the Plan presented by the Government of the United Kingdom on July 14, 1937.

The Spanish Government can only ask with astonishment why the Non-Intervention Committee has allowed an entire year to pass without proceeding to a study of a matter which presents to it such an importance. And it is certain, moreover, that no one in its place would fail to signalize the contrast existing between the inconceivable abandon in which has been held during an entire year the study of the possibilities of an effective aerial control, and the meticulousness and the exceptional care given to the study of other elements of non-intervention and control.

15. The provisions of the Plan on the aerial control would offer to the Government an excellent combination of circumstances for demanding that the entire system of control remain in suspense until the termination of the examination to which it has made allusion relative to the practical possibility of the establishment of an effective aerial control. Who could find such a demand unjustified when the Committee has not been put to inconvenience to produce a plan of control which contains, relative to the aerial question, the simple announcement of a study of its practical possibility; a Plan which, relating to the maritime question—interesting also very particularly to the Government—produces a system deficient in every respect; and which, uniquely in so far as it refers to the land control, applicable *only* to the Spanish Government, presents a system of complete and total effectiveness? The Government limits itself, meanwhile, to submitting to the consideration of the Committee the foregoing observations relative to aerial control.

#### IV. RIGHTS OF BELLIGERENCY

16. The Spanish Government does not believe it opportune to enter now into the analysis of the provisions of the Plan relative to this important question and which, on the other hand, do not demand to be examined and answered by it. But it cannot allow the occasion to pass without reiterating its point of view of principle, expressly contrary to any recognition of belligerency, more or less limited, in favor of the Spanish rebels. In the first place, because it has not any doubt that it is foreign aid, and exclusively this, which has allowed the rebels to prolong the rebellion. And secondly, because it has always required as a prior condition of any recognition of belligerency the most strict abstention from the deliberate employment of methods of warfare contrary to principles of humanity.

17. The Spanish Government hopes that the attitude defined by the present note will be considered as a new proof of the manner in which it responds to the treatment of which it has been the object, since, from the beginning of the non-intervention, its unquestionable rights of state sovereignty to defend itself against the aggression and to see its freedom of commerce respected have been encroached upon. Resolved, in all serenity, not to allow itself to be influenced any longer by the unjust and partial form under which, since its institution, non-intervention has not ceased to be practiced against it, the Spanish Government, faithful to the principles which inspire its foreign policy, is prepared to give its help to every effort to eliminate from the "Spanish conflict" the foreign intervention and the menace which this represents to international peace.

9. TEXT OF THE REPLY BY THE INSURGENT AUTHORITIES REJECTING THE PLAN FOR THE WITHDRAWAL OF VOLUNTEERS AND FOR THE ACCORDING OF BELLIGERENT RIGHTS, AUGUST 21, 1938 <sup>10</sup>

The Ministry of Foreign Affairs presents its compliments to the British agency [at Burgos, Spain, the Insurgent capital] and with reference to its note Number 173 of July 8 last begs it to be good enough to transmit to the Non-Intervention Committee the declaration which it has the honor to make as follows:

The National Government of Spain, being desirous of cooperating from the outset in the efforts made by the Non-Intervention Committee to maintain the peace of Europe in its note of November 18, 1937, accepted in principle the withdrawal of an equal number of foreign volunteers on each side, proposing at the start the figure of 3,000.

A new proposal having been adopted by the committee at its plenary session of the 5th of July last, the National Government of Spain repeats its acceptance in principle of the withdrawal of foreign volunteers; and as authentic evidence of the practical worth of said declaration, in its desire to offer the world obvious proof of its effective collaboration in the laudable efforts of the committee, it is disposed from now to increase to 10,000 the number of foreigners to be withdrawn immediately, subject to reasonable and fair measures of reciprocity on the part of the Red [Loyalist] faction and to proper guarantees that neither should return to Spain, and on the basis of a prior grant of belligerent rights.

On the other hand, the National Government of Spain also offers, as an extraordinary concession, to respect the establishment of two safety ports in the enemy zone, one in the Catalonian area and the other in the Levantine [lower Mediterranean] area, in order that said vessels carrying foodstuffs may enter those ports and provided that sufficient guarantees of vigilance are

<sup>10</sup> Associated Press dispatch in the *New York Times*, Aug. 22, 1938. Published also in the *London Times*, Aug. 22, 1938.

forthcoming to prevent perversion of the aim pursued and that the ports in question, with selected zones, are at a distance from the scene of military operations.

The foregoing concession on the part of the National Government is of a nature never before made by any government engaged in active warfare and is proof of its generous attitude toward foreign commerce and the peaceful provisioning of our adversaries and once again demonstrates the lofty humanitarian ideals which animate the National Government and its spirit of sacrifice in the interests of European peace.

The National Government of Spain desires likewise to avail itself of this opportunity to offer its cooperation with the object of defining and limiting, so far as may be practicable, the conception of military objectives in relation to aerial bombardments and to regulate this difficult problem with the view of causing the least possible damage both to neutral nations and to the Spanish civilian population.

Having demonstrated in clear manner, by the concessions recorded above, its sincere desire to assist the Non-Intervention Committee in the great task imposed upon it of insuring that the Spanish problem shall not disturb the peace of Europe, the National Government now goes on to set forth all those points which, in its judgment, would improve the plan submitted for its consideration, adjusting same to meet requirements of the actual situation.

#### THE GRANT OF BELLIGERENT RIGHTS

The National Government, as already stated in its note of November 18, 1937, deems this grant to be a right.

There exist to a full extent in National Spain these conditions necessary to request that the above may be recognized:

(a) The possession of, and full sway over, a portion of National Spanish territory which greatly exceeds that held by the enemy.

(b) A legal and regular government which de facto exercises over said portion of territory the rights inherent in sovereignty.

(c) A regular land and air army, perfectly organized and subject to strict military discipline, which affords a guarantee of order and which is striving with undoubted success for the integrity of the country, respecting and causing to be respected, with the utmost scrupulousness, the laws and customs of warfare, and acting under the direction of a generalissimo on behalf of the nation and its government; and the existence of a navy which is conducted under the same conditions as the army and which controls territorial waters, both forces operating a flag already recognized by many countries and respected eight years ago by the entire world without exception.

No requirement for the enjoyment of belligerent rights is, therefore, lacking and, nevertheless, these are now afforded us to a diminished extent and on terms which render them wholly valueless.

On the one hand, we are prohibited to exercise the right to search ships

flying the flag of the [non-intervention] committee and, on the other hand, States which are not signatories of the resolutions of the committee, not having granted us any belligerent rights, will likewise dispute our power to stop and search ships which belong to them. Only in very exceptional circumstances are we accorded the right of inspecting cargo of those ships which, according to their papers, are proceeding from one foreign port to another, and, as if this were only a small matter, a list of contraband is imposed on us, whereas framing of such has always been a right reserved to belligerents.

The National Government of Spain cannot, however great its willingness for conciliation, agree to the grant of belligerent rights in the form proposed. It demands, as a condition and precedent, that this right, which is the consecration of an undoubted fact, should be granted in all its fullness and not subject to conditions, since there is no question of a favor capable of discussion, but of a well-founded right, without previous recognition of which, free from any restriction, the National Government of Spain would lack sufficient personality to enter into an agreement, such as the one now offered to it, and would find itself subject to obligations without receiving any adequate equivalent.

#### WITHDRAWAL OF VOLUNTEERS

In the practical realm, the proposed proportional withdrawal of volunteers presents difficulties which emasculate and sterilize the proposal. For this reason, the Spanish National Government has been obliged to propose that practical formulas for effecting the withdrawal basis of the proportional withdrawal referred to above is enumeration of the number of foreign volunteers in the service of each party in the conflict.

Without any fear of error, it is possible at this stage to affirm that the commissions charged with this duty will be unable to make the calculations entrusted to them unless the interested parties act in good faith. This is due to the following reasons:

(a) The way in which foreigners have been recruited for the enemy army, by which recruits, from the moment of their enlistment, have been given national names and passports and the fact that the opposing faction has had recourse to the juridical fiction of naturalizing such recruits as Spaniards.

(b) Their distribution, in the majority of cases, in different combatant units of the enemy force, in lieu of forming a homogeneous body.

(c) The lack, in the case of the hostile forces, of any distinguishing mark by which foreigners can be identified.

(d) Possibility of distributing them temporarily among the civilian population during the period in which the commission is engaged in the task of investigation, a distribution which in large cities such as Madrid, Barcelona and Valencia would render any effective investigation impossible.

(e) The fact that volunteers enlisted in the enemy army have been incorporated for preference in combatant units, which for that reason are stationed in most advanced positions. How could commissions of inspection, even if they were fully qualified to carry out their work, proceed to these places, as it is not possible to suspend hostilities for a single moment in order to perform these counting operations, or that foreigners should visit the battle fronts?

#### HAVEN IN MEDICAL SERVICES

How would it be possible to avoid the foreign volunteers being overlooked, bearing in mind the possibility of incorporating them in medical services which without exception are excepted from measures contemplated for the remainder of the army?

If the enemy resort to these dishonest practices, and there are reasonable grounds for anticipating they will do so, what guarantees will counting of volunteers then offer? What guarantees can the committee offer that such concealments will not take place, and consequently that proportional withdrawal of volunteers will not turn out to be unequal and arbitrary, which is in any case inevitable, since no real basis is known which would permit of establishing the proposed proportion?

On the other hand, in the form proposed by the committee, the computation of foreign volunteers would exclude all those who are nationals of countries not forming part of the committee, that is to say, those of the whole world with the exception of Europe (exclusive of Switzerland) who number approximately 50 per cent of the total number of foreign volunteers as is revealed by data afforded by contingents of *foreign volunteers*.\* Application of such a principle would, therefore, result in approximately half of the foreign volunteers remaining in the enemy camp.

In demonstrating to the committee this serious danger, it is also necessary to emphasize the consequences which would result from the fact that on our side all foreign volunteers would be withdrawn since they are all nationals of European countries, whereas on the adverse side not only would 50 per cent of foreign volunteers be exempt from withdrawal, but this number might constantly be increased owing to the fact that resolutions of the committee do not apply to nationals of three-quarters of the world, and that no agreement exists prohibiting propaganda and recruiting, which could be openly conducted in favor of the Reds by some State concentrating propaganda and influence over a large proportion of the masses of the excepted countries.

#### UNEQUAL RESULTS ARE SEEN

From the foregoing it follows that application of the proposed plan offers unequal results to the parties, and for this and the other reasons indicated, the Spanish National Government, while reaffirming its previous declara-

\* In the London *Times* text this appears as "foreign prisoners."

tions, suggests, as it has already done, withdrawal of both parties of any equal number of foreign volunteers as the sole, practicable procedure.

There would thereby be attained an identical diminution of foreign volunteers participating in the Spanish conflict on both sides, although it would be necessary to strengthen this withdrawal with guarantees, which do not figure in the present plan, in order to avoid the aim pursued developing into a farce.

If this proposal is accepted, the labors of the contemplated commissions would be extraordinarily simplified, discharge of their task would be easier and would put an end to the risk of the activities on the part of the foreign personnel constituted by the complicated system now proposed, which personnel, enjoying all kinds of immunities *to command*,† perhaps even belonging to nations who do not maintain friendly relations with the National Government but do so with the Red government, would form an organization which no nation engaged in war would permit, and which, on the other hand, might be the cause of incidents and conflicts of unsuspected proportions, which at all costs, and as an elementary and prudent precaution, we desire to avoid.

#### OBSERVATION ON FRONTIERS

The Spanish National Government, faithful to what was stated in its above-mentioned note of November 18, 1937, expresses its agreement with all measures proposed, with the view of the establishment and strengthening of observation on Spanish land frontiers, and in its earnest desire to cooperate to the utmost in application of the plan, considers that the proposed closing of frontiers should be permanent and without any condition which might limit it, and that vigilance on the frontiers should be strengthened in order to avoid infringements which have occurred in the past, notwithstanding agreements entered into and the observation service established thereon.

The case is otherwise as regards maritime observation, both as regards observation in ships and permanent inspection in ports.

There is authentic evidence to reveal its inadequacy, since many vessels have taken contraband of war to enemy ports, while carrying on board observers of the Non-Intervention Committee.

Permanent commissions in ports would usurp in humiliating manner the sovereign rights of Spain and would give rise to the same dangers as those specified in the case of the supervision of observers supervising the evacuation of volunteers, all of which can be avoided by transferring the proposed vigilance service in our ports to ports of departure of ships, which are points at which there are good grounds for supposing that war material can be supplied.

But what undoubtedly would better solve this problem would be full recognition of the rights of belligerency to the contending parties who, as

† Words "to command" omitted in London *Times* text.

interested parties, would stop on their own behalf all contraband, and, without doubt, would act with zeal which nothing could surpass.

As regards air observations foreshadowed in paragraphs 170 to 174 of the plan, it is incompatible with the military situation through which Spain is passing and is consequently impracticable, since at the present time airports are entirely military in character and cannot be subjected to foreign observation.

In the same manner, air observation by means of flights over national territory is unacceptable, since this would constitute permanent foreign watch on its defenses and on movement of its troops, and would lend itself to repeated incidents which might be invested with incalculable gravity.

#### FUNDAMENTAL OBSERVATIONS GIVEN

The foregoing are fundamental observations which the contents of the plan suggest to the National Spanish Government, which reserve the right to formulate others of detail, which they consider useless to mention at this stage, until they see a satisfactory solution to those which have already been put forward.

If, as cannot be doubted, the nations represented on the Non-Intervention Committee aim at obviating the danger of the conflict extending to other countries, National Spain will give to this end, as it is at present doing, all facilities compatible with respect for its sovereignty and its rights which cannot be waived.

National Spain is fighting for the defense of Western civilization in a heroic and victorious war which already has lasted two years and, in spite of its great desire to serve Europe, it cannot depart from the path which its obligations impose upon it, or emasculate the character of the conflict, when in its generosity it has offered practical and equitable methods to ward off dangers which it does not fail to recognize.

It accepts willingly withdrawal of volunteers, subject to conditions indicated above which would render it practicable and which would reduce to a minimum the number and duties of foreign agents in Spain.

Finally, on this occasion of having the honor of addressing itself to the Non-Intervention Committee on which is represented almost the whole of Europe, National Spain does not wish to lose this opportunity of making known to the committee and to the world, which is emerging gradually from an unrest provoked by perverse propaganda of its enemies with a view to complicating the international situation, that it solemnly reiterates its former affirmations that it is fighting for the greatness and independence of the country and does not consent, and will never consent, to the slightest mortgage on its soil, or on its economic life, and that it will defend at all times, to the last handful, its territory, its protectorates and its colonies, if any one dares to make an attempt against them.





## APPENDIX IX

### THE NYON ARRANGEMENT AND SUPPLEMENTARY AGREEMENT, SEPTEMBER 14, 17, 1937<sup>1</sup>

#### I

##### THE NYON ARRANGEMENT

Whereas arising out of the Spanish conflict attacks have been repeatedly committed in the Mediterranean by submarines against merchant ships not belonging to either of the conflicting Spanish parties; and

Whereas these attacks are violations of the rules of international law referred to in Part IV of the Treaty of London of April 22, 1930, with regard to the sinking of merchant ships and constitute acts contrary to the most elementary dictates of humanity, which should be justly treated as acts of piracy; and

Whereas without in any way admitting the right of either party to the conflict in Spain to exercise belligerent rights or to interfere with merchant ships on the high seas even if the laws of warfare at sea are observed and without prejudice to the right of any participating Power to take such action as may be proper to protect its merchant shipping from any kind of interference on the high seas or to the possibility of further collective measures being agreed upon subsequently, it is necessary in the first place to agree upon certain special collective measures against piratical acts by submarines:

In view thereof the undersigned, being authorised to this effect by their respective Governments, have met in conference at Nyon between the 9th and the 14th September, 1937, and have agreed upon the following provisions which shall enter immediately into force:

I. The Participating Powers will instruct their naval forces to take the action indicated in paragraphs II and III below with a view to the protection of all merchant ships not belonging to either of the conflicting Spanish parties.

II. Any submarine which attacks such a ship in a manner contrary to the rules of international law referred to in the International Treaty for the Limitation and Reduction of Naval Armaments signed in London on April 22, 1930, and confirmed in the Protocol signed in London on November 6, 1936, shall be counter-attacked and, if possible, destroyed.

III. The instruction mentioned in the preceding paragraph shall extend to any submarine encountered in the vicinity of a position where a ship not

<sup>1</sup> League of Nations, *Document C.409.M.273.1937.VII.*

belonging to either of the conflicting Spanish parties has recently been attacked in violation of the rules referred to in the preceding paragraph in circumstances which give valid grounds for the belief that the submarine was guilty of the attack.

iv. In order to facilitate the putting into force of the above arrangements in a practical manner, the Participating Powers have agreed upon the following arrangements:

1. In the western Mediterranean and in the Malta Channel, with the exception of the Tyrrhenean Sea, which may form the subject of special arrangements, the British and French fleets will operate both on the high seas and in the territorial waters of the Participating Powers, in accordance with the division of the area agreed upon between the two Governments.

2. In the eastern Mediterranean,

(a) Each of the Participating Powers will operate in its own territorial waters;

(b) On the high seas, with the exception of the Adriatic Sea, the British and French fleets will operate up to the entrance to the Dardanelles, in those areas where there is reason to apprehend danger to shipping in accordance with the division of the area agreed upon between the two Governments. The other Participating Governments possessing a sea border on the Mediterranean undertake, within the limit of their resources, to furnish these fleets any assistance that may be asked for; in particular, they will permit them to take action in their territorial waters and to use such of their ports as they shall indicate.

3. It is further understood that the limits of the zones referred to in sub-paragraphs 1 and 2 above, and their allocation shall be subject at any time to revision by the Participating Powers in order to take account of any change in the situation.

v. The Participating Powers agree that, in order to simplify the operation of the above-mentioned measures, they will for their part restrict the use of their submarines in the Mediterranean in the following manner:

(a) Except as stated in (b) and (c) below, no submarine will be sent to the sea within the Mediterranean.

(b) Submarines may proceed on passage after notification to the other Participating Powers, provided that they proceed on the surface and are accompanied by a surface ship.

(c) Each Participating Power reserves for purposes of exercises certain areas defined in Annex I hereto in which its submarines are exempt from the restrictions mentioned in (a) or (b).

The Participating Powers further undertake not to allow the presence in their respective territorial waters of any foreign submarines except in case of urgent distress, or where the conditions prescribed in sub-paragraph (b) above are fulfilled.

vi. The Participating Powers also agree that, in order to simplify the problem involved in carrying out the measures above described, they may

severally advise their merchant shipping to follow certain main routes in the Mediterranean agreed upon between them and defined in Annex II hereto.

VII. Nothing in the present agreement restricts the right of any Participating Power to send its surface vessels to any part of the Mediterranean.

VIII. Nothing in the present agreement in any way prejudices existing international engagements which have been registered with the Secretariat of the League of Nations.

IX. If any of the Participating Powers notifies its intention of withdrawing from the present arrangement, the notification will take effect after the expiry of thirty days and any of the other Participating Powers may withdraw on the same date if it communicates its intention to this effect before that date.

DONE AT NYON this fourteenth day of September, nineteen hundred and thirty-seven, in a single copy, in the English and French languages, both texts being equally authentic, and which will be deposited in the archives of the Secretariat of the League of Nations.

## ANNEX I

*Areas Reserved<sup>2</sup> for Submarine Exercises*

In accordance with paragraph v, sub-paragraph (c) of the Arrangement, the Participating Powers reserve for the purpose of exercises the areas defined below, within which their submarines will be exempt from the restrictions mentioned in paragraph v, sub-paragraphs (a) and (b) of the Arrangement.

*United Kingdom of Great Britain and Northern Ireland:*

Area No. 1. *In the vicinity of Gibraltar.* The area enclosed by Latitude  $35^{\circ} 35'$  N. and  $35^{\circ} 50'$  N., Longitude  $04^{\circ} 50'$  W. and  $05^{\circ} 08'$  W.

Area No. 2. *West of Island of Lemnos.* The area enclosed by Latitude  $39^{\circ} 45'$  N. and  $40^{\circ} 00'$  N., Longitude  $24^{\circ} 38'$  E. and  $24^{\circ} 57'$  E.

Area No. 3. *Malta.* Area enclosed by sector of a circle of 40 miles radius between  $135^{\circ}$  and  $270^{\circ}$  from Delimara Light.

Area No. 4. *Cyprus.* Area enclosed by sector of a circle of 40 miles radius between  $045^{\circ}$  and  $135^{\circ}$  from Famagusta.

*Bulgaria:* Nil.

*Egypt:* Nil.

*France:*

Area No. 1. *Gulf of Tunis.* The portion of the Gulf lying south of a line joining Plane Island and Zembra Island.

<sup>2</sup> See attached chart facing page 608.

Area No. 2. *Off Toulon*. The area lying between the coast and the following line: Meridian of Sicié, a parallel passing through a point 3 miles South of Cape D'Armes and extending to the Meridian of Titan and thence  $060^{\circ}$  to the Meridian passing through Mentone.

Area No. 3. *Gulf of Hammamet*. The area lying between the parallel passing through Hammamet and the Meridian of the Island of Kuriat.

*Greece:*

Area No. 1. *Gulf of Corinth*. The portion of the Gulf to the East of a line joining Fort Rion and Fort Antirion.

Area No. 2. *Gulf of Athens*. The portion of the Gulf to the North-West of a straight line joining S.E. corner of Poros Island, Phleva Island and Zervi Point (Vari Bay).

*Roumania:* Does not require any zone in the Mediterranean.

*Turkey:* The area covered by the territorial waters joining the Straits to the militarised zone of Smyrna. The Turkish Government reserves three other areas, viz.: the Straits of the Dardanelles, the Sea of Marmora and the Black Sea.

*Union of Soviet Socialist Republics:*

Does not require any zone in the Mediterranean.

*Yugoslavia:* The area enclosed by the lines joining the following points:

North of River Boyana.

$42^{\circ} 00' N.$      $18^{\circ} 00' E.$

$43^{\circ} 00' N.$      $15^{\circ} 20' E.$

$44^{\circ} 20' N.$      $14^{\circ} 20' E.$

Grujia Light.

ANNEX II

*Main Routes Which Each Signatory Power May Advise Its Merchant Ships to Follow*<sup>3</sup>

1. In accordance with paragraph vi the following main routes are hereby agreed:

*Route No. 1: Gibraltar-Port Said (or Eastern Mediterranean).*

Pass through the following points:

A. 40 miles north of Habibas Island light.

B. 15 miles north of Cape Matifou light.

C.  $060^{\circ}$  Galita Island light 30 miles.

D. 10 miles north of Gozo Island light.

E.  $35^{\circ} 47'$  north,  $16^{\circ} 40'$  east.

M.  $33^{\circ} 30'$  north,  $25^{\circ} 00'$  east.

<sup>3</sup> See attached chart facing page 608.

*Route No. 2: Gibraltar–Spanish ports–Marseilles.*

Pass through the following points:

- A. 40 miles north of Habibas Island light.
- F. 15 miles east of Cape San Antonio.
- G. 15 miles east of Cape San Sebastian.

*Route No. 3: Gibraltar–Marseilles (East of Balearics).*

Pass through the following points:

- A. 40 miles north of Habibas Island light.
- H. 20 miles east of Aire Island light (Minorca).

*Route No. 4: Gibraltar–Genoa.*

Pass through the following points:

- A. 40 miles north of Habibas Island light.
- H. 20 miles east of Aire Island light (Minorca).

*Route No. 5: Algiers–Marseilles or Genoa.*

Pass through the following points:

- B. 15 miles north of C. Matifou light.
- H. 20 miles east of Aire Island light (Minorca).

*Route No. 6: Marseilles–Bizerta–Port Said.*

Pass through the following points:

- I.  $229^{\circ}$  Toro Island light (Sardinia) 15 miles.
- C.  $060^{\circ}$  Galita Island light 30 miles.
- D. 10 miles north of Gozo Island light.
- E.  $35^{\circ} 47'$  north,  $16^{\circ} 40'$  east.

*Route No. 7: Marseilles–Messina–Port Said.*

Through point:

J. 25 miles south of Marseilles towards the Straits of Bonifacio and through point:

- E.  $35^{\circ} 47'$  north,  $16^{\circ} 40'$  east towards Messina.

*Route No. 8: Ægean and Black Sea–Western Mediterranean.*

Pass point E. and Cervi and Doro Channels.

*Route No. 9: Spanish ports–Eastern Mediterranean–North of Balearics.*

Pass point G. and Straits of Bonifacio.

*Route No. 10: Spanish ports–Eastern Mediterranean–South of Balearics.*

Pass the points:

- F. 15 miles east of Cape San Antonio.
- B. 15 miles north of C. Matifou light.

*Route No. 11: Adriatic ports–Western Mediterranean.*

Pass through the following points:

- K. 25 miles east of Otranto.
- E.  $35^{\circ} 47'$  north,  $16^{\circ} 40'$  east.

*Route No. 12: Adriatic ports—Eastern Mediterranean*

Pass through the following points:

K. 25 miles east of Otranto.

L. 249° north point Zante Island 30 miles.

M. 33° 30' north, 25° 00' east.

*Route No. 13: Black Sea—Ægean—Alexandria.*

Pass through point:

N. 23 miles east of Skyros light and then west of Stampalia Island through Kaso Strait.

2. Ships proceeding to intermediate ports lying off these routes are advised to remain on the above routes until abreast their port of destination and similarly when leaving such ports they are advised to proceed by the most direct course to reach the route in question.

3. The above routes may be altered by agreement—in such manner as may be proved by experience to be advisable.

4. In emergency the local naval authorities operating under this agreement are empowered to vary the route herein recommended.

Their decisions shall also be communicated for information to the Participating Powers through the diplomatic channel.

## ADDENDUM TO ANNEXES TO NYON ARRANGEMENT

(Paragraphs v(c) and vi)

Chart illustrating:

(a) Areas reserved for submarine exercises (Annex I).

(Chart appears on page opposite)

(b) Main routes which each signatory Power may advise its merchant ships to follow (Annex II).

(Chart appears on page opposite)

## II

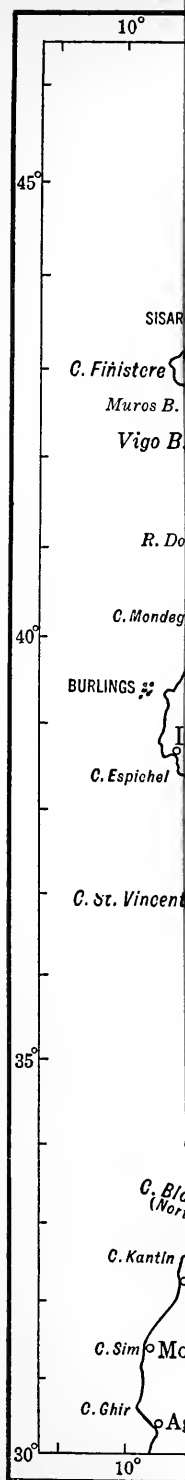
## AGREEMENT SUPPLEMENTARY TO THE NYON ARRANGEMENT

Whereas under the Arrangement signed at Nyon on the 14th September, 1937, whereby certain collective measures were agreed upon relating to piratical acts by submarines in the Mediterranean, the Participating Powers reserved the possibility of taking further collective measures; and

Whereas it is now considered expedient that such measures should be taken against similar acts by surface vessels and aircraft;

In view thereof, the undersigned, being authorised to this effect by their respective Governments, have met in conference at Geneva on the seventeenth day of September and have agreed upon the following provisions which shall enter immediately into force:

1. The present Agreement is supplementary to the Nyon Arrangement and shall be regarded as an integral part thereof.



*Route No. 12: Adriatic ports—Eastern Mediterranean*

Pass through the following points:

K. 25 miles east of Otranto.

L. 249° north point Zante Island 30 miles.

M. 33° 30' north, 25° 00' east.

*Route No. 13: Black Sea—Ægean—Alexandria.*

Pass through point:

N. 23 miles east of Skyros light and then west of Stampalia Island through Kaso Strait.

2. Ships proceeding to intermediate ports lying off these routes are advised to remain on the above routes until abreast their port of destination and similarly when leaving such ports they are advised to proceed by the most direct course to reach the route in question.

3. The above routes may be altered by agreement—in such manner as may be proved by experience to be advisable.

4. In emergency the local naval authorities operating under this agreement are empowered to vary the route herein recommended.

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Chart illustrating:

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## AGREEMENT SUPPLEMENTARY TO THE NYON ARRANGEMENT

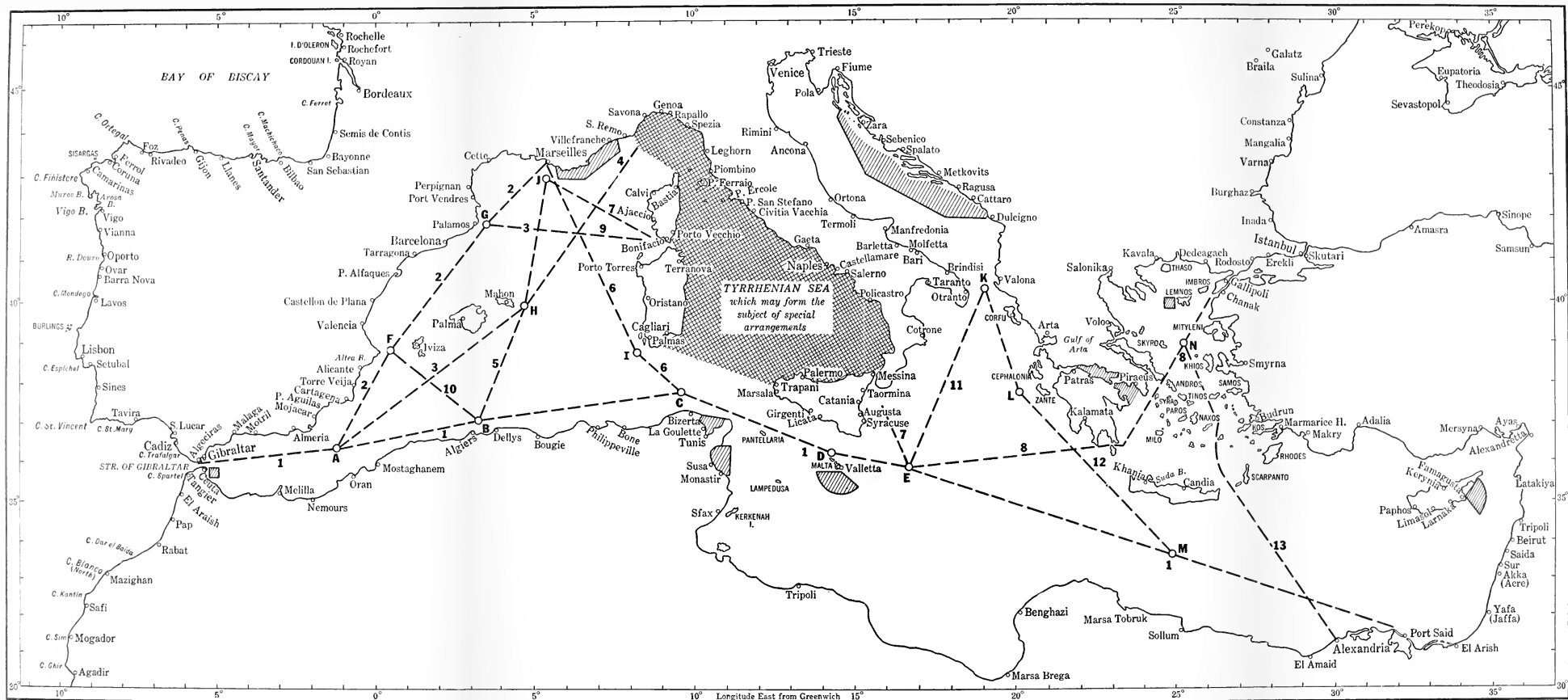
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Whereas it is now considered expedient that such measures should be taken against similar acts by surface vessels and aircraft;

In view thereof, the undersigned, being authorised to this effect by their respective Governments, have met in conference at Geneva on the seventeenth day of September and have agreed upon the following provisions which shall enter immediately into force:

1. The present Agreement is supplementary to the Nyon Arrangement and shall be regarded as an integral part thereof.







II. The present Agreement applies to any attack by a surface vessel or an aircraft upon any merchant vessel in the Mediterranean not belonging to either of the conflicting Spanish parties, when such attack is accompanied by a violation of the humanitarian principles embodied in the rules of international law with regard to warfare at sea, which are referred to in Part IV of the Treaty of London of April 22nd, 1930, and confirmed in the Protocol signed in London on November 6th, 1936.

III. Any surface war vessel, engaged in the protection of merchant shipping in conformity with the Nyon Arrangement, which witnesses an attack of the kind referred to in the preceding paragraph shall:

(a) If the attack is committed by an aircraft, open fire on the aircraft;

(b) If the attack is committed by a surface vessel, intervene to resist it within the limits of its powers, summoning assistance if such is available and necessary.

In territorial waters each of the Participating Powers concerned will give instructions as to the action to be taken by its own war vessels in the spirit of the present Agreement.

DONE AT GENEVA this seventeenth day of September, 1937, in the English and French languages, both texts being equally authentic, in a single copy which will be deposited in the archives of the Secretariat of the League of Nations.



## APPENDIX X

### INSTRUCTIONS TO THE SPANISH NAVY ON THE RIGHT OF VISIT AND SEARCH, 1898<sup>1</sup>

1. Right of visit can only be exercised by belligerents; hence it can evidently be only resorted to during international conflicts by one or other of the states at war, as also during internal civil or insurrectionary wars, when one or more foreign powers have recognized the insurrectionary party as belligerents. In such circumstances, right of visit can be exercised by the mother country, but it is restricted to the merchant vessels of the nation or nations who have given this recognition, and who are for such reason in the position of neutrals.

2. In accordance with the position laid down in the preceding article, ships of war and merchant vessels of the belligerents, when legally armed either as auxiliary cruisers of their navy or as privateers, if and when they are authorized, may, in their own territorial waters, or those under the jurisdiction of the enemy, or in the open seas, detain such merchant vessels as they meet with in order to verify the legitimacy of their flag, and, if neutrals and proceeding to a port of the other belligerent, the nature of their cargo.

3. Seas subject to the sovereign jurisdiction of neutral powers are absolutely inviolable; right of visit may not, therefore, be resorted to within them, even if it be alleged that it was attempted to exercise such right in the open sea, and that, on chase being given, and without losing sight of the vessel pursued, the latter penetrated into neutral waters.

Neither may the violation of the rights attaching to such waters be justified under the pretext that the coast washed thereby was undefended or uninhabited.

4. The following is the method of exercising right of visit:

(a) Notification to the vessel to be visited to lay to and state its nationality is made by the visiting vessel hoisting her national flag and firing a blank shot, a signal upon which the merchant vessel is bound to hoist the flag of the nation to which it belongs and lay to.

(b) If the merchant vessel does not obey this first intimation and either refuses to hoist her flag or does not lay to, a second gun will be fired, this time loaded, care being taken that the shot does not strike the vessel, though going sufficiently close to her bows for the vessel to be duly

<sup>1</sup> *United States Foreign Relations*, 1898, pp. 775-778. These instructions are still in force for the Spanish Navy, according to a letter from the Spanish Embassy in Washington to the author, dated April 6, 1938.

warned; and if this second intimation be disregarded, a third shot will be fired at the vessel, so as to damage her, if possible, without sinking her. Whatever be the damage caused to the merchant vessel by the third shot, the commanding officer of the man-of-war or captain of the privateer cannot be made responsible.

Nevertheless, in view of special circumstances, and in proportion to the suspicion excited by the merchantman, the auxiliary vessel of war or privateer may delay resorting to the last extremity until some other measure has been taken, such as not aiming the third discharge at the vessel, but approaching it and making a fresh notification by word of mouth; but if this last conciliatory measure prove fruitless, force will immediately be resorted to.

(c) The visiting vessel will place herself at such distance as her commander or captain may think convenient from the vessel to be visited, according to circumstances of wind, sea, current, or the suspicion inspired by the said vessel; and if these circumstances make it advisable for the boat about to make visit to approach on the windward side and go to leeward on returning, there is no reason why she should not do so.

But if, by existing treaties between the nations to which the vessels respectively belong, the distance to be kept is specified, such a clause of conventional law shall be respected, if the circumstances of wind, sea, or current above mentioned permit.

(d) The visiting vessel will send to the merchant vessel a boat with an officer, who will effect the visit in question, under a verbal commission from his commanding officer; said officer may board the merchant vessel in company with two or three of the crew of the boat, but it will be left to his discretion whether he shall do so or go alone.

(e) The visiting officer will inform the captain of the merchant vessel that, under commission from the commander of the Spanish ship of war, or of the auxiliary cruiser (here follows name of ship of war or auxiliary cruiser), or from the captain of the privateer (here follows name of vessel), he intends to effect a visit and will request him to produce his sailing papers, or official document which takes their place, in proof of the nationality of the vessel therein stated being that of the flag which he has hoisted, and to show the port to which the vessel is proceeding.

Should the first point be satisfactorily proved, and should the port of destiny prove to be a neutral one, the visit is thereby concluded.

But should the vessel be proceeding to a port belonging to the enemy of the nation to which the visiting vessel belongs, the officer will ask the captain of the merchant vessel for the documents in which the nature of the cargo is stated, in order to ascertain if there be contraband of war; should there be none, the visit is definitely concluded, and the neutral vessel is at liberty to proceed on its voyage; but should there be contraband, its capture is proceeded with, but no search may, in these circumstances, be made.

5. The visiting officer should have instructions from his commanding officer authorizing the visited vessel to continue her voyage if the visit has presented no difficulties, in order that the delay may not be longer than is absolutely indispensable.

6. If the captain of the visited vessel asks to have the visit certified, the visiting officer will accede to his request and will insert a note in the sheet for the day in the ship's books in the following form :

The undersigned (rank in the navy), sailing on the (gunboat, cruiser, etc., of His Catholic Majesty, named ———, or the auxiliary cruiser or privateer), whose commanding officer is (rank and name), certifies that this day at (hour of morning or evening), under a verbal commission from the said commanding officer, he has carried out the visit of the (class of vessel, name, and nationality of merchant service), captain (name of captain), and ascertained from the papers shown to him the legitimacy of the flag which she flies and the neutrality of her cargo.

Date.

Signature of visiting officer.

Seal of visiting vessel.

7. The visit will likewise be recorded in the books of the visiting vessel, the following circumstances being stated:

(a) Details of the intimation or intimations given to the visited vessel.

(b) Hour of its laying to.

(c) Name and nationality of visited vessel and captain thereof.

(d) Manner in which visit was effected, and its result, stating name of officer who executed it.

(e) Hour at which vessel was authorized to proceed.

8. The record of the visit, which, as stated in Article VI, can be made at the wish of the captain of the visited vessel, will become an indispensable formality should the vessel contain wounded or sick soldiers, subjects of the enemy, for in such a case all such persons will, by the mere act of visit, be incapacitated from bearing arms again during the war, in accordance with the first paragraph of the tenth additional article of the Geneva Convention.

The visiting officer will therefore in such a case make a notification of the same to the chief of the expeditionary force, and will make a note in the books of the visited vessel in the form prescribed in Article VI, with the following addition:

This vessel contains (number of sick and wounded) individuals (of the army or navy or both) sick and wounded, subjects of the enemy, all of whom, by the fact of this visit, are incapacitated from bearing arms again during the war, according to paragraph one of the tenth additional article of the Geneva Convention, of which I have made notification to the commander of the expeditionary force, who stated that he was (here follow rank and name).

9. The visit is not an act of jurisdiction on the part of the belligerent; it is a natural means of legitimate defense allowed by international law, lest

fraud and bad faith should assist the enemy. This right should therefore be exercised with the greatest moderation by the belligerent, special care being taken to avoid causing the neutral any extortion, damage, or trouble that is not absolutely justifiable.

In consequence of this, the detention of the ship visited should always be as short as possible, and the proceedings restricted as far as they can be, their exclusive object being, as explained, for the belligerent to ascertain the neutrality of the ship, and in case of its neutrality (if bound for a port of the enemy) the inoffensive and neutral description of its cargo.

It is not necessary, therefore, to demand during the visit any other documents than those proving these two conditions, for what the belligerent requires is to prevent any damage, favoring, or assisting the enemy; to prevent assistance and help being furnished to them that may contribute directly to the prolongation of the war, and not to be assured that all ships belonging to neutral powers are provided with all the documents required by the laws of their country.

10. In consequence of the visit the vessel is captured in the following case:

(1) If the nationality of the vessel proves to be that of the enemy, unless covered by the immunities established by the Geneva Convention by which Spain is bound.

(The said exceptions are given at the end of these instructions.)

(2) If active resistance is offered to the visit, that is, if force is employed to escape it.

(3) If a legal document to prove the nationality cannot be produced.

(4) If bound for the enemy's ports, the vessel cannot produce a document proving the nature of the cargo.

(5) If the cargo is composed in whole or more than two-thirds of contraband of war.

In the case of the illicit part of the cargo being less than two-thirds only, the articles which are contraband of war will be confiscated, and to unload them the ship will be conducted to the nearest and most convenient Spanish port.

It must be understood that goods directly and immediately affecting the war are contraband only when destined for the enemy's ports, for when they are consigned to a neutral port these goods are munitions of war, but not contraband.

But if a vessel is dispatched for a neutral port in proper form, but makes for a port of the enemy, then, if found near to one of these ports or sailing in quite a different direction than the proper one shown in her papers, she shall be captured if the captain cannot prove that *force majeure* drove him from his proper course.

(6) If she carries on behalf of the enemy officers, troops, or seamen.

(7) If she carries letters and communications of the enemy, unless she belong to a marine mail service, and these letters or communications are in



bags, boxes, or parcels with the public correspondence, so that the captain may be ignorant of their contents.

(8) If the vessel is employed in watching the operations of the war, either freighted by the other belligerent or paid to perform this service.

(9) If the neutral vessel takes part in this employment or assists in any way in such operations.

The vessel will also be captured when, during the visit, duplicate or false papers are found, since such cases fall under the regulations contained in clauses (3) and (4) or in both, since neither false nor duplicate papers can serve to justify the conditions referred to.

Neither an attempt at flight to escape visit nor simple suspicion of fraud respecting the nationality of the vessel or the nature of its cargo authorize the capture of the vessel.

The circumstance that the papers are written in a language unknown to the officer making the visit does not authorize the detention of the vessel.

11. Merchant vessels sailing under convoy, under charge of one or more ships of the navy of their nation, are absolutely exempt from the visit of the belligerents, being protected by the immunity enjoyed by the warships.

As the formation of a convoy is a measure emanating from the government of the state to which belong the vessels protecting the convoy, as well as the vessels under convoy, it must be taken as certain that the government in question not only will not allow fraud of any kind, but has employed the strictest measures to avoid fraud being committed by any of the vessels under the convoy.

It is therefore useless for the belligerent to inquire of the chief officer of the convoy whether he guarantees the neutrality of ships sailing under his charge, or of the cargo they carry.

12. On the visit taking place, it is not permissible to give orders to open the hatchways in order to examine the cargo, nor to open any article of furniture to search for documents. The ship's papers presented by the captain to prove the legitimacy of the flag and the nature of the cargo are the only proof which international law allows.

13. Although it very seldom occurs that the principal ship's papers, whether those referring to her nationality or to the nature of her cargo, are lost, mislaid, or left on shore by mistake, if such a case should occur, and by other papers or means the captain can convince the officer visiting the ship of the neutrality of the ship and her cargo, he may authorize the captain to continue her voyage; but if an explanation cannot be given, the ship will be detained and conducted to the nearest Spanish port until the necessary investigation concerning the point or points in question is made.

14. The commander of the vessel carrying out the visit and the officer commissioned to make the visit, the former in ordering and the latter in carrying it out, should act without prejudice to the good faith of the neutral being visited, and without losing sight of the consideration and respect that nations owe to one another.



## APPENDIX XI

### DOCUMENTS CONCERNING THE RELATION OF THE LEAGUE OF NATIONS TO THE SPANISH CIVIL STRIFE

#### 1. APPEAL BY THE SPANISH GOVERNMENT RESPECTING FOREIGN ARMED INTERVENTION, NOVEMBER 27, 1936 <sup>1</sup>

In notes addressed to the Powers parties to the non-intervention agreement, in a letter to the Secretary General of the League of Nations and in my speech to the Assembly of the League, the Spanish Government has denounced the armed intervention of Germany and Italy in favour of the rebels in the Spanish civil war—such intervention constituting the most flagrant violation of international law. This intervention has culminated in the recognition of the chief of the rebels set up as a Government by the “wire-pullers” of these same Powers. Such a proceeding is virtually an act of aggression against the Spanish Republic. The declared intention of the rebels of forcibly preventing free commerce with the ports controlled by the Government claims attention as a factor likely to create international difficulties—difficulties which, as is well known, Franco declared his intention of provoking from the outset of the rebellion. These difficulties are increased by the fact that the rebels have been recognised by Germany and Italy, which, and particularly one of them, as is proved by information in the possession of the Government of the Republic, are preparing to co-operate with them in the naval sphere as they have done in the air and on land. These facts, through their very simultaneity, constitute for the Spanish Government a circumstance affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends. On behalf of the Spanish Government, I therefore request Your Excellency, in the supreme interests of peace and in virtue of Article 11 of the Covenant, to take the necessary steps to enable the Council to proceed, at the earliest possible moment, to an examination of the situation outlined above.—JULIO ALVAREZ DEL VAYO, *Minister for Foreign Affairs of the Spanish Republic*.

#### 2. RESOLUTION ADOPTED BY THE COUNCIL OF THE APPEAL OF THE SPANISH GOVERNMENT, DECEMBER 12, 1936 <sup>2</sup>

The Council,

After hearing the observations made before it;

<sup>1</sup> League of Nations, *Official Journal*, January, 1937, p. 35.

<sup>2</sup> *Official Journal*, January, 1937, pp. 18-19.

## I

Noting that it has been requested to examine a situation which, in terms of Article 11 of the Covenant, is such as to affect international relations and to threaten to disturb international peace or the good understanding between nations upon which peace depends;

Considering that that good understanding ought to be maintained irrespective of the internal régimes of States;

Bearing in mind that it is the duty of every State to respect the territorial integrity and political independence of other States, a duty which, for Members of the League of Nations, has been recognised in the Covenant:

Affirms that every State is under an obligation to refrain from intervening in the internal affairs of another State;

## II

Considering that the setting-up of a Committee of non-intervention and the undertakings entered into in that connection arise out of the principles stated above;

Having been informed that new attempts are being made in the Committee to make its action more effective, in particular by instituting measures of supervision, the necessity for which is becoming increasingly urgent:

Recommends the Members of the League represented on the London Committee to spare no pains to render the non-intervention undertakings as stringent as possible, and to take appropriate measures to ensure forthwith that the fulfilment of the said undertakings is effectively supervised;

## III

Views with sympathy the action which has just been taken on the international plane by the United Kingdom and France with a view to avoiding the dangers which the prolongation of the present state of affairs in Spain is causing to peace and to good understanding between nations;

## IV

Notes that there are problems of a humanitarian character in connection with the present situation, in regard to which co-ordinated action of an international and humanitarian character is desirable as soon as possible;

Recognises further, that, for the reconstruction which Spain may have to undertake, international assistance may also be desirable;

And authorises the Secretary-General to make available the assistance of the technical services of the League of Nations should a suitable opportunity occur.

3. MEMORANDUM SETTING FORTH THE PRINCIPLES APPLICABLE TO THE EVACUATION OF PERSONS WHO HAVE BEEN GRANTED ASYLUM IN THE EMBASSIES AND LEGATIONS AT MADRID, ON THE BASIS OF THE MAIN IDEAS COMMUNICATED BY THE DOYEN OF THE DIPLOMATIC CORPS AT MADRID TO THE SECRETARY OF STATE FOR FOREIGN AFFAIRS OF THE VALENCIA GOVERNMENT <sup>3</sup>

1. Guarantees to be given for the safe departure abroad of persons who have been granted asylum.

2. Old men, women and children to be allowed complete freedom of movement outside Spain.

3. All males capable of bearing arms who have been granted asylum must reside, until the end of the civil war, in towns to be designated and in countries not coterminous with Spain. The authorities of the countries in which these persons are to reside would be approached by the League of Nations with a view to obtaining the necessary permission for them to stay there, and officials of the League of Nations would be responsible, in agreement with the authorities of the said countries, for exercising special supervision over these refugees who would further be required to swear that they would not take part in the Spanish civil war.

4. Evacuation under the supervision of a Commission of the League of Nations and departure from Madrid in motor-coaches, in each of which the persons granted asylum would be accompanied by a League representative.

5. Embarkation in a Spanish port, under the supervision of the League of Nations, on vessels which would take them from Spain. The countries that have granted asylum would be called upon to contribute to the cost in proportion to the number of persons to whom they have given asylum.

6. Guarantee that the property of persons evacuated will be respected until they can return to Spain and protect themselves in normal conditions.

7. Guarantee of security for the departure of foreign Missions from Madrid.

4. ADOPTION OF THE REPORT OF THE HEALTH MISSION SENT AT THE REQUEST OF THE SPANISH GOVERNMENT, AND HUMANITARIAN QUESTIONS CONNECTED THEREWITH (EVACUATION OF PERSONS WHO HAVE TAKEN ASYLUM IN THE EMBASSIES AND LEGATIONS AT MADRID, ETC.), JANUARY 27, 1937 <sup>4</sup>

The President of the Council presented the following report:

I

The Council has examined the report of the Health Mission (Annex 1644, page 206) sent to Spain by the Health Organisation in execution of its resolution of December 12th, 1936. It will assuredly desire to pay a tribute to

<sup>3</sup> *Official Journal*, February, 1937, pp. 99-100.

<sup>4</sup> *Official Journal*, February, 1937, pp. 130-131; 134.

the authors of the report—Dr. Lasnet, Dr. Wroczyński and Dr. Laigret. They have made a very fully documented and valuable study, the utility of which has been emphasised by the representative of Spain and our Rapporteur on health questions, the representative of New Zealand.

The representative of Spain has told us that his Government is taking steps to give effect to the conclusions of the report. In particular, it is anxious to evacuate half the population of Madrid without delay and to procure the transport recommended for that purpose by the Health Mission sent to Spain.

All that the Council need do, I think, is to adopt the procedural resolution that has already been recommended to us by our Rapporteur on health questions (*Official Journal*, p. 101)—that is to say, to transmit to the Health Committee the chapters of the Health Mission's report dealing with the prevention of epidemics. I may remind you that in one of those chapters the urgency of the typhus question and the necessity of holding a consultation of experts on that subject are emphasised.

## II

As regards the evacuation of persons who have sought asylum in embassies and legations at Madrid, the Council has decided to consider this as a humanitarian question connected with the matters dealt with in the Health Mission's report.

Having conversed both with the representative of Spain and with the representative of Chile, who directed the Council's attention to this problem, I am in a position to explain the views of those two representatives. Among the information supplied to me I can, of course, make use only of such as concerns the question of the evacuation of those refugees and the humanitarian aspect of the matter.

The representative of Spain has referred to the statement he made to the Council on December 12th last. He then said that, in accordance with the attitude adopted in the note he had addressed to the members of the diplomatic corps, he was "quite prepared to examine the problem direct with each of the Governments concerned, bearing in mind all its aspects." He added that this method of individual negotiation with the representatives of the Powers concerned had already led to satisfactory results. Agreements had been arrived at with the Argentine and Mexico; further agreements were under discussion, and the Spanish Government was sure that it would also come to agreements with such other Powers as might wish to negotiate with it for the evacuation of persons who had found asylum in their embassies or legations at Madrid.

The representative of Chile stated that he was in entire agreement with the procedure of direct individual negotiations with the Spanish Government. Solely from a humanitarian point of view, however, it seemed to him necessary to obtain certain assurances beforehand. The guarding of the refugees during their transport to the port of embarkation would have to be

entrusted to Spanish forces in which the embassy or legation concerned would have sufficient confidence; the evacuation of the refugees from the embassy or legation would have to be complete, although it could naturally be carried out by stages; each group of refugees would have to be accompanied by a representative of the embassy concerned and certain embassies might accordingly have to increase their staff on this account. The refugees would have to be evacuated to a country which was not adjacent to Spain, and the representative of Chile, fully appreciating the anxiety that the Spanish Government might feel as regards the future activities of certain of those refugees, proposed that all men capable of bearing arms should be required to reside until the end of the civil war in towns to be specified, in the foreign country to which they had been evacuated. According to the suggestion of the representative of Chile, officials of the League of Nations might be instructed, in agreement with the authorities of the country to which the refugees had been evacuated, to exercise special supervision over them, while they would also be asked to take an oath to take no part in the civil war in Spain.

In the opinion of the representative of Chile, an agreement on those preliminary points would facilitate the separate negotiations of the Spanish Government with his own Government, which, realising its responsibility towards the other Governments that had supported its *démarche*, would wish them to be treated on an equal footing.

The representative of Spain, on being informed of the point of view of the representative of Chile, said that he was just as desirous as the latter that the separate agreements which he had in view should effectively lead to the evacuation of the embassies and legations concerned. In its own territory, the Spanish Government alone was responsible for the safety of the groups of refugees evacuated, and recent experience of the execution of the agreement with the Argentine showed that evacuation could be carried out with all necessary safeguards. But it was precisely because, in agreeing to evacuation, the Spanish Government made itself responsible for the safety of the refugees while evacuation was being carried out that it must be free to decide for itself what were the appropriate measures. The representative of the Spanish Government repeated that he was ready to negotiate an agreement similar to those already concluded with every Government which might so desire.

Both representatives are actuated by the same humanitarian motives, and I believe that direct negotiations, which I hope will be begun at the earliest possible moment, should make it possible to settle the problem of the evacuation of the refugees in the Chilean Embassy to the satisfaction of both Governments.

I will therefore merely ask the Council to take note of this report.

. . . . .

*The conclusions of the report were adopted.*

5. TELEGRAM FROM THE SPANISH GOVERNMENT RELATING TO THE STEAMSHIP "PALOS," JANUARY 6, 1937<sup>5</sup>

I have the honour to communicate to Your Excellency the following. On December 23rd last, the German steamer *Palos*, part of whose cargo contained war material, was arrested in waters under Spanish jurisdiction. The said war material was attached by the Spanish authorities and the ship was then allowed to continue her voyage with all the rest of the cargo, among which were foodstuffs for the rebels, and with the crew, except one Spanish citizen with no papers who was on board. The fact that the arrest of the *Palos* took place within waters under Spanish jurisdiction is evidence that the procedure followed was perfectly legitimate. The Spanish authorities were merely exercising the right of examination within territorial waters, which derives from the right of police and is inherent in every sovereign State. Under the pretext of reprisals for the arrest of the *Palos*, the German fleet has committed acts of direct aggression against Spanish vessels trading between different ports in the Peninsula controlled by the Government. After the seizure of the Spanish ship *Soton*, her second officer was taken on board the *Koenigsberg*, where he was obliged to sign the following declaration: "I have been informed that the S.S. *Soton*, commanded by Captain Pedro Lopez, has been captured by the cruiser *Koenigsberg* by way of reprisal for the unlawful detention of part of the cargo and one of the passengers of S.S. *Palos*, captured on December 23rd last. I have been informed that I am to obey the orders of the cruiser *Koenigsberg* and navigate on the course prescribed. I promise for myself and the other officers to carry out strictly the orders given and transmit them to the captain." An order was given to him indicating the form of departure and the course to be followed. On the same day, the trans-Mediterranean ship *Aragon* was captured by the German battleship *Admiral Scheer*, while carrying 1,200 tons of cargo, when leaving the port of Almería. On January 3rd, the *Koenigsberg* arrested the ship *Marta Junquera* with 600 tons of cargo, bound from Bilbao to Santander and Gijón. It was on the same day that the first telegram was received from the German naval command to the Government of the Republic, in the following terms:

"The German Admiral in Spanish waters is prepared, after the surrender of the passenger and the rest of the crew attached on board the German steamer *Palos*, to surrender the arrested steamer *Aragon* and to suspend further reprisals. He awaits a reply by radio-telegram to the *Koenigsberg*."

This evening, January 5th, a further radiogram has been received, signed this time, in the following terms:

"Following communicated to Valencia Government: The two vessels, *Aragon* and *Marta Junquera*, having been seized by the German naval forces, it is again required that the passenger and the rest of the cargo of the *Palos* be surrendered in return for the release of the two Spanish ships

<sup>5</sup> *Official Journal*, March-April, 1937, p. 262.



seized. If within the three days ending January 8th at 8 a.m. such surrender does not take place, the seized vessels and their cargoes will, after the relevant settlement of accounts, be handed over and used in agreement with the Spanish Government recognised by us. Should any fresh act of piracy be committed against German ships, the Government of the Reich will be obliged to take further steps.—VON FISCHER, *Rear-Admiral*."

The Government of the Republic cannot admit that the exercise of police rights in Spanish territorial waters over German merchant ships trading with the rebels is any justification for firing upon Spanish merchant ships, as in the case of the *Soton*, or capturing them, as in the cases of the *Aragon* and the *Marta Junquera*. Furthermore, the Government of the Republic cannot reply to the injunctions of a German Admiral, who calls himself the German Admiral in Spanish waters, without surrendering its rights in their entirety, nor can it bargain with its sovereignty. The aggressive activity of the German fleet is the latest form of the German Government's systematic breach of the Non-Intervention Agreement, in a series of violations beginning with the supply of war material and technicians to the rebels and continuing with the despatch of German military contingents disguised as volunteers, interfering with the freedom of trade.

In the communication I have had the honour to make on behalf of the Government of the Republic to the United Kingdom Government, which had acted as spokesman of the London Non-Intervention Committee to the Government of the Republic in connection with the new plan of control accepted in principle by the Spanish Government in the spirit of international collaboration which inspires all its policy, I drew attention to the fact that this action on the part of the navy is capable of leading to the gravest complications. If the Spanish navy or air force happened to be on the spot when such incidents occurred, they would be obliged to take defensive action so as to prevent the German navy's interference. Should such an eventuality occur, the whole object of the policy of non-intervention, in so far as it aims at localising the conflict, and as emphasised by the resolution unanimously adopted by the Council at its extraordinary session in December, would be seriously compromised. Generally speaking, the whole cause of European peace is placed in imminent danger by the coincidence between such aggressions and the constant despatch of volunteers by countries which manifestly seek to repeat the game of placing other nations in the face of accomplished facts and are sending as many thousands of men as they consider necessary, as they have already done in the case of war material, hoping to sign a general agreement once their objectives have been attained. This is clearly the purpose of certain delays.

In my speech to the Council on December 11th, I spoke of "the international war on Spanish soil." I should now add: "and on the Spanish seas." The Spanish Government's anxiety which led it to ask for the extraordinary session of the Council, owing to the insecurity of peace, was fully justified. Subsequent events have unfortunately proved it doubly right.

Requesting you to circulate the present communication to all the States Members of the League, I have the honour to be, etc.—JULIO ALVAREZ DEL VAYO, *Minister for Foreign Affairs of Spain*.

6. TELEGRAM FROM THE SPANISH GOVERNMENT RELATING TO ITALIAN INTERVENTION IN SPAIN, MARCH 13, 1937<sup>6</sup>

The statements of the Italian officers and men taken prisoner during the last few days in the Guadalajara sector confirm beyond possibility of denial the presence of regular military units of the Italian army sent to fight on Spanish soil in flagrant violation of the provisions of Article 10 of the Covenant, whereby "the Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League." From these statements made in the presence of the Spanish authorities, it appears that on February 6th and following days numbers of Italian regular troops, equipped, armed and supplied, landed at Cadiz from the Italian steamer *Sicilia* and other ships. They were concentrated in the port of Santa Maria and subsequently conveyed to the Guadalajara front to take part in the present offensive. This is being conducted by four regular divisions of the Italian army—the first, second and third divisions of Blackshirts, the last being commanded by General Nuvolini, whose headquarters are at Brihuega, and the first Littoria division, commanded by General Bergonzoli, with headquarters at Almadrones. The commander-in-chief of this army corps is General Mangini, whose headquarters are at Algora. The attacking forces are completed by two special brigades, one of German and Italian regular troops and the other of German regular troops and four motorised companies of "carabinieri." Each division has two regiments of three battalions of 650 men, composed of four companies—three of rifles and automatic rifles, and one of Fiat machine-guns. Each regiment has one platoon of 45-mm. mortars and one battery of 65.17-mm. guns, one platoon of 75.27-mm. and one of 100.17-mm., each consisting of three batteries having four pieces, the first on lorries and the others on tractors, an anti-aircraft battery of 20-mm. firing 260 shots a minute, a battalion of 50 mixed tanks, some armed with eight Fiat machine-guns and anti-tank machine-guns, others having in addition 47-mm. guns, one gas and flame-projector company with six platoons of the former and two of the latter, and lastly bridge-train, sappers, artificers, hospital orderlies, supply corps and wireless telegraphists. All the divisions are motorised. Each battalion has 70 lorries and the division has also a reserve park. The battalions in action include Nos. 500, 624, 824, 835 and 840. The air force consists of three German flights and four Italian fighter flights and one bomber flight. The machines are of the Fiat, Savoia and Romeo types. Two more Italian divisions are to come. Headquarters plans to take Madrid while the Italian and German squadrons, under pretext of guarding the coast, attack Barcelona and Valencia. The above is a summary

<sup>6</sup> *Official Journal*, March-April, 1937, pp. 263-264.

of the statements made by Antonio Luciano, major on the active list of the Italian regular army, commanding the machine-guns of the first Littoria division; Achille Sacchi, lieutenant on the active list of the Italian regular army, of the third Blackshirt division; Giuseppe Moretti, of the first company of battalion 835; Andrea Cappone, of the mortar platoon of battalion 835; Francesco Lodo, rifleman of battalion 835; Giovanni Marotto, of battalion 835; Giuseppe Rossotto, of the second company of battalion 624, etc. These facts, besides constituting an attack upon the "territorial integrity and political independence" of Spain, reproduce under aggravated circumstances the situations incompatible with international law created in recent times by the totalitarian States and amount to a resort to war without previous declaration, a dangerous proceeding denounced by the representative of Spain in the September Assembly. The Government of the Republic, being of the opinion that ever since the foundation of the League of Nations there has been on the continent of Europe no more scandalous violation of the obligations imposed by the Covenant, and in the same spirit of loyalty to the great institution to which it belongs that led it in December to ask for the extraordinary meeting of the Council to denounce a situation "affecting international relations which threatens to disturb international peace," now brings to Your Excellency's notice the facts stated above and requests you to communicate them urgently to all States Members.—JULIO ALVAREZ DEL VAYO.

7. LETTER FROM THE MEXICAN GOVERNMENT RELATING TO THE FOREIGN INTERVENTION IN SPAIN, MARCH 29, 1937 <sup>7</sup>

At the last meeting in London of the Non-Intervention Sub-Committee, a *communiqué* to the following effect was issued to the Press:

"The Sub-Committee agreed to invite all the representatives on the Committee to request their Governments to furnish them with instructions with a view to considering the possibility of extending the Non-Intervention Agreement in such a way as to secure the co-operation of non-European countries."

In this connection, my Government has instructed me to inform you that it is profoundly surprised at the attitude adopted by certain European Governments towards the international problem raised by the Spanish rebellion.

The universality of the League Covenant, to which Mexico acceded in 1931 with a sincere desire to co-operate in ensuring world peace, not only impels our Government to interest itself in events that endanger collective security, but, from the higher standpoint of humanity and justice, obliges it to make its voice heard in deploring the lamentable situation which prevails in Spain.

My Government considers it its duty to employ all the means in its power to promote world peace and, more especially, to bring to an end the armed conflict of which the Spanish Republic has been the victim for the last eight

<sup>7</sup> *Official Journal*, March-April, 1937, p. 264.

months. My country accordingly ventures to appeal to the humane sentiments of the States Members of the League; for the sole effect of the attempts to apply the so-called non-intervention policy, owing to the form they have taken and the time at which they were made, has been to deprive Spain of assistance which, under international law, the legitimate Government of that country was logically entitled to expect from States with which it has normal diplomatic relations.

This lack of co-operation with the constitutional authorities of Spain is cruelly prolonging a fratricidal struggle, and, owing to the participation of foreign elements, the possibility that the conflict may lead to serious international complications is growing more imminent every day.

Mexico cannot admit that, while she is being asked to lend her assistance in solving world problems, an attempt should be made to reduce the scope of her peacemaking action and to circumscribe European problems by a method which, if successful, would undermine what is left of the solid foundations on which the League was built. Mexico also considers that the neutrality advocated in regard to the Spanish conflict should be interpreted in accordance with the lofty principles of the League Covenant, and that the clear distinction made between a Government victim of aggression, to whom every material and moral assistance should be afforded, and aggressor groups, who should certainly not be granted facilities enabling them to continue the struggle with greater bloodshed, should be extended to cases of military rebellion such as that which has occurred in Spain.

In putting forward these considerations, Mexico is actuated, not only by the desire that they should help if possible to improve the lamentable situation of Spain, but also by the intention clearly to define her international position and to show how far that position coincides with the correct application of the essential principles of the law of nations; for it is in every way inexpedient that a properly constituted Government, whatever its characteristics, provided it legitimately represents the national will, should remain at the mercy of a faction supported by elements foreign to its life and to its political traditions.

(Signed) ISIDRO FÁBELA,  
*Mexican Minister,  
 Permanent Delegate accredited to the  
 League of Nations.*

#### 8. APPEAL BY THE SPANISH GOVERNMENT AGAINST FOREIGN INTERVENTION, MAY 19, 1937<sup>8</sup>

At the request of the Spanish Government, the Council held an extraordinary session in December, 1936, to examine, in virtue of Article 11 of the Covenant, the situation created by the intervention of certain Powers in the Spanish struggle. On that occasion, it was explicitly stated that the resolution adopted by the Council at its meeting on December 12th, 1936, did not

<sup>8</sup> *Official Journal*, May-June, 1937, p. 572.

exhaust the question that had been raised and that the Government reserved the right, should circumstances render it necessary, to ask the Council to proceed with the examination of the question. In the opinion of the Spanish Government, the development of foreign intervention in Spain since that resolution was adopted has assumed such proportions that, without any kind of doubt, it constitutes circumstances rendering it necessary for the Council to proceed with the examination of the question which was the subject of the extraordinary session of December, 1936. Accordingly, I have the honour to request you to be good enough to place that question on the agenda of the forthcoming ordinary session of the Council.—GIRAL, *Minister for Foreign Affairs of Spain*.

9. RESOLUTION OF THE COUNCIL ON THE SPANISH APPEAL AGAINST FOREIGN INTERVENTION, MAY 29, 1937<sup>9</sup>

The Council,

After hearing the observations made before it:

I

Confirming the principles and recommendations set forth in its resolution of December 12th, 1936, and, in particular, the duty of every State to respect the territorial integrity and political independence of other States, a duty which, for Members of the League of Nations, has been recognised in the Covenant:

1. Observes with regret that the development of the situation in Spain does not seem to suggest that the steps taken by the Governments on the recommendations of the Council have as yet had the full effect desired;

2. Notes that an international scheme of supervision of the non-intervention undertakings assumed by the European Governments is now in force;

3. Notes with very great satisfaction the action taken by the London Non-Intervention Committee with a view to the withdrawal of all non-Spanish combatants taking part in the struggle in Spain;

4. Expresses the firm hope that such action will be taken in consequence of this initiative as may ensure with the utmost speed the withdrawal from the struggle of all the non-Spanish combatants participating therein; this measure is at present, in the Council's opinion, the most effective remedy for a situation the great gravity of which, from the standpoint of the general peace, it feels bound to emphasise and the most certain means of ensuring the full application of the policy of non-intervention;

5. Urges Members of the League, represented on that Committee, to spare no effort in this direction;

6. Expresses the hope that the early success of these efforts will lead without delay to the cessation of the struggle and give the Spanish people the possibility of deciding its own destiny;

<sup>9</sup> *Ibid.*, May-June, 1937, pp. 333-334.

## II

1. Profoundly moved by the horrors resulting from the use of certain methods of warfare, condemns the employment, in the Spanish struggle, of methods contrary to international law and the bombing of open towns;

2. Desires to emphasise its high appreciation of the efforts of unofficial institutions and certain Governments to save civilians, especially women and children, from these terrible dangers.

10. APPEAL OF THE SPANISH GOVERNMENT AGAINST ITALIAN NAVAL AGGRESSION, AUGUST 21, 1937<sup>10</sup>

[Due to the exigencies of space, the lengthy recitation of material facts relating to the operation of Italian naval vessels has been omitted.—Ed.]

7. The facts related above constitute an additional and particularly flagrant aggression by Italy against the Spanish Republic. This is so obvious and self-evident that even an attempt to prove it would be an insult to the good sense of yourself and the Members of the Council. But these facts further constitute an aggravation of exceptional importance of the state of tension which at present exists in the Mediterranean as a result of the open assistance afforded to the rebels by the Italian naval forces. This aggravation consists not only in the insolent way in which the attacks are made against our ships by the said naval forces but also in the extension of the zone in which this state of tension exists, so much so that at present the whole Mediterranean from Marseilles and Barcelona to the Dardanelles must be considered as a zone in which at any moment an incident may occur which might produce a general conflagration.

8. It is obvious that such a situation ought to be examined without a day's delay by the Council of the League of Nations in order that an attempt may be made to remedy it before it is too late and in order that the criminal conduct of the Italian Government in attacking Spanish merchant vessels without provocation should receive due condemnation in the eyes of world public opinion as represented by the League of Nations. The Government of the Republic, conscious of its responsibilities as a signatory of the Covenant, has very carefully considered whether it was not its duty to take the initiative of proposing a special meeting of the Council of the League to examine the facts related in the first six paragraphs of this Note. After mature reflection, and in view of its constant desire not to take any step which might be considered as a new factor of disturbance, the Government of the Republic has decided, first, to ask for the placing of the question dealt with in the present Note on the Agenda of the Council in virtue of Article 11 of the Covenant and, secondly, to leave it to the judgment of the President of the Council, with the advice of the Secretary-General, to decide as to the desirability of an immediate extraordinary session of the Council. In the opinion of the Government of the Republic, the gravity of the facts and of

<sup>10</sup> *Official Journal*, December, 1937, pp. 1161-1163.

the situation created by them would fully justify such a meeting, but it recognises that, taking into account all the various elements of the present situation (and no one can do so with more impartiality and authority than the President of the Council), a different conclusion might be reached.

9. In previous communications, the Spanish Government has drawn attention to the dangers to which foreign intervention in our country exposes European peace. The threat of international war, which was first of all made evident in Spanish territory, was later extended to our coasts and is now spreading to more distant parts. This situation obliges the Spanish people to raise before the world a most passionate protest against the criminal action of its aggressors. In denouncing these acts the Government of the Republic declares its firm intention of using every possible means of defending its rights, thus serving the best interests of the Spanish people and the higher cause of universal peace.

10. In any case the Government of the Republic wishes to make it clear that in view of the exceptional gravity of the situation created by the criminal and repeated aggressions suffered by the Spanish merchant ships at the hands of Italian naval forces, it has performed the duty incumbent on it as a Member of the League of Nations in bringing these facts to the knowledge of the other Members of the League, in asking that the question should be placed on the agenda of the Council, and in leaving it to the judgment of the President of the Council to take a decision as to the desirability of summoning an immediate extraordinary session of the Council.

Requesting you to communicate the present telegram to all States Members of the League,

(Signed) JOSÉ GIRAL,  
*Spanish Minister for Foreign Affairs.*

# II. RESOLUTION OF THE COUNCIL ON THE THIRD APPEAL OF THE SPANISH GOVERNMENT, OCTOBER 5, 1937<sup>11</sup>

The Council,

1. Noting that, at the present session, the representative of Spain has preferred to call its attention only to the question of the insecurity of shipping under the Spanish or other flags in the Mediterranean, reserving for the Assembly the consideration of other international problems that have arisen in connection with the struggle in Spain;

2. Having regard to the Arrangement signed at Nyon on September 14th, 1937, whereby the participating Powers agreed upon special collective measures to prevent submarine attacks in the Mediterranean upon any non-Spanish ships;

3. Having regard to the Agreement supplementary to the Arrangement of Nyon, signed by the same Powers at Geneva, on September 17th, 1937, whereby they agreed upon measures to deal also with similar acts committed by surface vessels or aircraft—measures which meet one of the points with

<sup>11</sup> *Official Journal*, December, 1937, pp. 944-945.

regard to which the representative of Spain expressed concern in his speech in the Council on September 16th;

4. Noting the explanations given to the Council by the representative of France, President of the Nyon Conference, concerning the scope of the Nyon Arrangement;

5. Observing that the measures agreed upon at Nyon "without prejudice to the possibility of further collective measures being agreed upon subsequently" by the participating Powers have proved effective;

6. Having heard the observations made by various Members of the Council at its meeting of September 16th, 1937;

7. Notes that attacks have taken place in violation of the most elementary dictates of humanity underlying the established rules of international law which are affirmed, so far as war time is concerned, in Part IV of the Treaty of London of April 22nd, 1930, rules which have been formally accepted by the great majority of Governments;

8. Declares that all attacks of this kind against any merchant vessels are repugnant to the conscience of the civilised nations which now finds expression through the Council.

12. RESOLUTION SUBMITTED TO THE ASSEMBLY BY THE SIXTH COMMITTEE DEALING WITH THE SITUATION IN SPAIN AND COGNATE QUESTIONS, OCTOBER 2, 1937 <sup>12</sup>

(Not adopted)

The Assembly:

1. Associates itself with the Council in recalling that it is the duty of every State to respect the territorial integrity and political independence of other States—a duty which, for Members of the League of Nations, has been recognised by the Covenant;

2. Affirms that every State is under an obligation to refrain from intervening in the internal affairs of another State;

3. Recalls the special undertakings entered into by the European Governments, and the London Non-Intervention Committee which, in the intention of the countries to whose initiative it owes its origin, was set up for the purpose of restricting the Spanish conflict and thereby safeguarding peace in the rest of the world;

4. Regrets that not merely has the London Non-Intervention Committee failed, despite the efforts of the majority of its Members, of which the Assembly expresses its appreciation, to secure the withdrawal of non-Spanish combatants taking part in the struggle in Spain, but that it must today be recognised that there are veritable foreign army corps on Spanish soil, which represents foreign intervention in Spanish affairs;

5. Observes that the Council in its resolution of May 29th last, justly described this withdrawal as "the most effective remedy for a situation, the

<sup>12</sup> *Official Journal*, Special Supplement, No. 169, pp. 99-100.



great gravity of which, from the standpoint of the general peace, it feels bound to emphasise, and the most certain means of ensuring the full application of the policy of non-intervention”;

6. Sincerely trusts that the diplomatic action recently initiated by certain Powers will be successful in securing the immediate and complete withdrawal of the non-Spanish combatants taking part in the struggle in Spain;

7. Appeals to the Governments, which must all be animated by the desire to see peace maintained in Europe, to undertake a new and earnest effort in this direction;

And notes that, if such a result cannot be obtained in the near future, the Members of the League which are parties to the Non-Intervention Agreement will consider ending the policy of non-intervention;

8. Requests the Council in view of the provisions of Article 11 of the Covenant of the League, to follow attentively the development of the situation in Spain and to seize any opportunity that may arise for seeking a basis for a pacific solution of the conflict.

### 13. COMMUNICATION FROM THE SPANISH GOVERNMENT, APRIL 19, 1938<sup>13</sup>

On May 29th, 1937, the Council of the League of Nations adopted a resolution in which, after noting the action taken by the Non-Intervention Committee with a view to the withdrawal of all non-Spanish combatants taking part in the struggle in Spain, it expressed the firm hope that such action would be taken in consequence of this initiative as might ensure with the utmost speed the withdrawal from the struggle of all the non-Spanish combatants participating therein. According to the resolution, this measure was the most effective remedy for a situation the great gravity of which, from the standpoint of general peace, the Council felt bound to emphasise. A draft resolution submitted to the Assembly by its Sixth Committee on October 2nd, 1937, after regretting the Non-Intervention Committee's failure to secure the withdrawal of the non-Spanish combatants and recognising the presence of veritable foreign army corps on Spanish soil, expressed the hope that the diplomatic action recently initiated by certain Powers would be successful in securing the withdrawal of the non-Spanish combatants. If such a result could not be obtained in the near future, the Members of the League which were parties to the Non-Intervention Agreement would consider ending the policy of non-intervention. This draft resolution did not secure the unanimous support of the Assembly and therefore has no legal force. It nevertheless retains the moral force which it derives from having been voted by thirty-eight States Members of the League, including twelve of the fourteen present members of the Council. Since May, 1937, the Italian and German intervention in favour of the Spanish rebels has undeniably continued to increase to a considerable degree both quantitatively and qualitatively. Conclusive evidence to this effect, which is public knowledge,

<sup>13</sup> League of Nations, *Document C.133.M.79.1938.VII.*

has created so general and definite a current of opinion that no doubt or evasion is possible. But, in addition, the Government of the Republic possesses concrete information which it proposes to submit to the Council's consideration. It may be inferred that there has been a corresponding increase in the gravity of the danger to general peace, already emphasised by the Council a year ago, which is constituted by this growing foreign intervention in Spain. In view of all the above considerations, and for the same reasons as those which led it to ask the Council and the Assembly in May and September of last year to examine the situation created by foreign intervention in Spain, I have today the honour to request you on behalf of the Spanish Government to place this question on the agenda of the next ordinary session of the Council, which will open at Geneva on May 9th next.

14. RESOLUTION SUBMITTED TO THE COUNCIL, MAY 13, 1938<sup>14</sup>

(Not adopted)

The Council,

After having heard the statements submitted to it:

(a) Recalling its resolution of May 29th, 1937;

(b) Recalling that the Sixth Committee of the eighteenth session of the Assembly submitted to the Assembly a draft resolution containing, notably, the following provisions:

"The Assembly . . .

"6. Sincerely trusts that the diplomatic action recently initiated by certain Powers will be successful in securing the immediate and complete withdrawal of the non-Spanish combatants taking part in the struggle in Spain;

"7. Appeals to the Governments, which must all be animated by the desire to see peace maintained in Europe, to undertake a new and earnest effort in this direction;

"And notes that, if such a result cannot be obtained in the near future, the Members of the League which are parties to the Non-Intervention Agreement will consider ending the policy of non-intervention";

(c) Recalling that this draft resolution, although it did not succeed in receiving the unanimous vote of the Assembly, was voted by thirty-two States, including all the Members of the Council with the exception of Bolivia and Peru, which were among the countries that abstained from voting;

(d) Observing that the hypothesis envisaged in this draft resolution has been wholly realised, since neither the diplomatic initiative announced in September, 1937, nor any other subsequent initiative, has led to the departure from Spanish territory of a single non-Spanish combatant;

(e) Observing that the favourable vote of the Governments which voted this draft resolution can only be interpreted as the expression of an opinion

<sup>14</sup> *Official Journal*, May-June, 1938, p. 356.

in favour of envisaging the end of non-intervention if the non-Spanish combatants have not left Spanish territory "in the near future";

(f) Trusting that these Governments did not consider that the expression "in the near future" could be applied to the period of seven months which has elapsed since the draft resolution was submitted to the Assembly;

(g) Observing that it is a measure which can be adopted individually by each country without necessity for concerted action;

(h) Observing that, in a similar situation, the strict application of rights under international law has not resulted in a general conflagration;

Invites the Member States of the League who voted in favour of the draft resolution on the Spanish situation, presented to the Assembly by the Sixth Committee on October 2nd, 1937, to envisage, as from the present moment, the end of the policy of non-intervention.

#### 15. RESOLUTION ADOPTED BY THE ASSEMBLY, SEPTEMBER 30, 1938<sup>15</sup>

I. The Assembly expresses the hope that the Council will place on its agenda the proposal submitted to the Assembly on September 21st, 1938, by the Spanish delegation and will consider it in the light of the discussions which have taken place in the Sixth Committee (Document A.51.1938).

II. The Assembly also draws the attention of the Council to the discussion on the Norwegian delegation's proposal submitted to the Sixth Committee on September 28th (Document A.VI/13.1938).

#### DRAFT RESOLUTION SUBMITTED BY THE SPANISH DELEGATION, SEPTEMBER 21, 1938<sup>16</sup>

(Not adopted)

The Assembly,

Having been informed of the Spanish Government's decision to carry out the immediate and complete withdrawal of all the non-Spanish combatants engaged in the struggle in Spain on the Government side,

Having received the request of the Spanish Government for the prompt appointment of an international commission whose duty it would be to satisfy the League of Nations, and, through it, the public opinion of the world, that that withdrawal is carried out absolutely and completely,

Noting the Spanish Government's undertaking to afford the commissions every guarantee, facility, and assistance that it may think needful for the performance of its duty,

Decides to agree to the Spanish Government's request, and to ask the Council to appoint forthwith an international commission as requested by the Spanish Government, and to consult the latter as to the practical arrangements required to enable the commission to carry out its task as speedily as possible.

<sup>15</sup> League of Nations, *Document A.77.1938.VII*.

<sup>16</sup> League of Nations, *Document A.51.1938*.

16. REPORT AND RESOLUTION REGARDING A COMMISSION TO SUPERVISE THE WITHDRAWAL OF VOLUNTEERS, ADOPTED BY THE COUNCIL, SEPTEMBER 30, 1938<sup>17</sup>

I. At its meeting on September 30th, the Assembly adopted the following recommendation:

[Text in No. 15 above.]

This recommendation represents the outcome of the discussions in the Sixth Committee which followed the submission, by the Spanish Government, of a draft resolution reading as follows:

[Text in No. 15 above.]

As may be seen from records of the statements made by delegates during the Sixth Committee's discussions, the Spanish Government's proposal would not have been adopted unanimously. In the draft which it submitted to the Assembly, the Sixth Committee accordingly expressed the hope that the Council would consider the Spanish Government's proposal, "in the light of the discussions which have taken place in the Sixth Committee." It was understood that, in carrying out its mandate, the Commission appointed by the Council must not encroach upon the application of the non-intervention Committee's plan as a whole.

II. In view of the generally favourable attitude adopted by the members of the Sixth Committee on the substance of the question, the Council will doubtless consider that effect should be given to the request for the despatch to Spain of an international commission to verify the withdrawal of non-Spanish combatants by the Spanish Government. That withdrawal is to be effected in virtue of decisions which will be initiated and carried out by the Spanish Government alone. The Council cannot assume responsibility for them; but the Commission to be sent to Spain could, after making use of all the means of verification placed at its disposal by the Government, report on the result of the measures taken.

III. With a view to ensuring continuity of action in this matter in the interval between two sessions of the Council, it is proposed that the Council should appoint a Committee of three members to carry out the duties specified in Section IV below. This Committee might consist of the representatives of the United Kingdom, France and Iran.

IV. It will be the duty of this Committee of Three:

To appoint a small commission at once;

To establish contact with the Secretary-General with a view to determining the conditions under which the commission is to operate and all the relevant budgetary and administrative arrangements;

<sup>17</sup> League of Nations, *Document C./103rd Session/P.V.2(1)*, pp. 14-16.

To establish contact with the competent representative of the Spanish Government;

To submit a report on the question to the Council at its session in January, 1939.

Accordingly, the following resolution is submitted to the Council:

"The Council,

"Bearing in mind the statements made by Government representatives during the discussions in the Sixth Committee and the Assembly concerning the question submitted by the Spanish Government with regard to the withdrawal of non-Spanish combatants;

"Noting that the Non-Intervention Committee has drawn up a plan for the withdrawal from Spain of the foreign nationals taking part in the conflict in that country;

"Being anxious not to prejudice in any way the execution of this plan, which has already been accepted by the Spanish Government:

"(a) Adopts the present report;

"(b) Decides to despatch to Spain an international commission, whose duty it will be, making use of the facilities provided by the Spanish Government, to note the measures of withdrawal taken by that Government, and report on their effectiveness, on the disposal of the persons thus withdrawn and on the extent to which it considers that the withdrawal is complete;

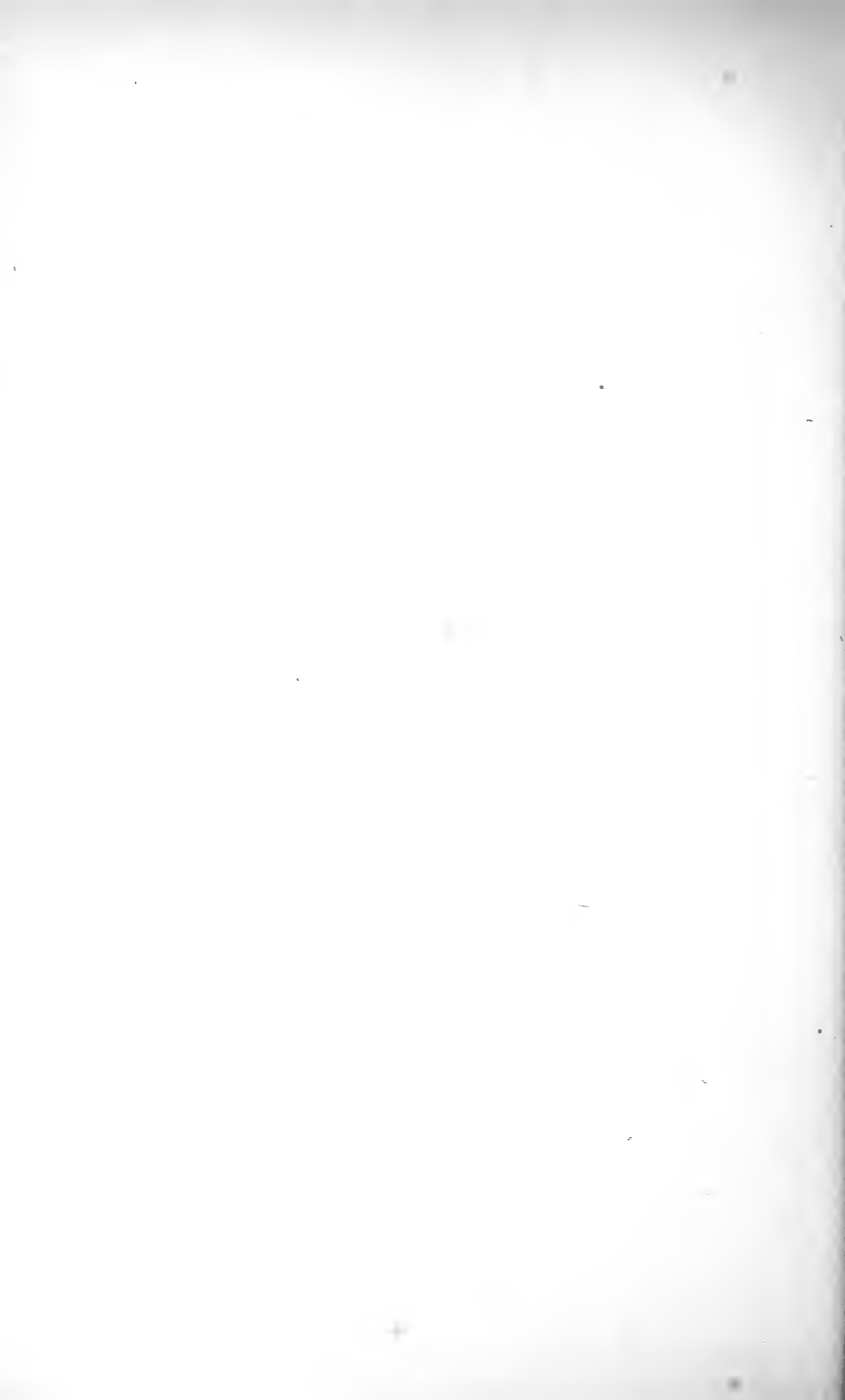
"(c) Declares that no responsibility is assumed by the Council either for the method of withdrawal or for the evacuation of the persons withdrawn;

"(d) Takes note of the Spanish Government's statement that it undertakes to afford the commission every guarantee, facility and assistance that the latter may think needful for the performance of its duty;

"(e) Appoints a committee of three members, consisting of the representatives of the United Kingdom, France and Iran, whose duty it will be to constitute, despatch and, so far as necessary, direct the working of the commission;

"(f) For this purpose, authorises the Secretary-General to draw the necessary funds from the 1938 budget—item 2(c)(1): 'Unforeseen expenditure (political)'—up to a maximum of 250,000 Swiss francs;

"(g) Authorises the Secretary-General, in agreement with the Committee of Three, to take such other action or measures as may be necessary to give effect to the present resolution."



## APPENDIX XII

### CONVENTION ON DUTIES AND RIGHTS OF STATES IN THE EVENT OF CIVIL STRIFE ADOPTED AT HAVANA, FEBRUARY 20, 1928<sup>1</sup>

#### ARTICLE I

The contracting States bind themselves to observe the following rules with regard to civil strife in another one of them.

First: To use all means at their disposal to prevent the inhabitants of their territory, nationals or aliens, from participating in, gathering elements, crossing the boundary or sailing from their territory for the purpose of starting or promoting civil strife.

Second: To disarm and intern every rebel force crossing their boundaries, the expenses of internment to be borne by the State where public order may have been disturbed. The arms found in the hands of the rebels may be seized and withdrawn by the Government of the country granting asylum, to be returned, once the struggle has ended, to the State in civil strife.

Third: To forbid the traffic in arms and war material, except when intended for the Government, while the belligerency of the rebels has not been recognized, in which latter case the rules of neutrality shall be applied.

Fourth: To prevent that within their jurisdiction there be equipped, armed or adapted for warlike purposes any vessel intended to operate in favor of the rebellion.

#### ART. 2

The declaration of piracy against vessels which have risen in arms, emanating from a Government, is not binding upon the other States.

The State that may be injured by depredations originating from insurgent vessels is entitled to adopt the following punitive measures against them: Should the authors of the damages be warships, it may capture and return them to the Government of the State to which they belong, for their trial; should the damage originate with merchantmen, the injured State may capture and subject them to appropriate penal laws.

The insurgent vessel, whether a warship or a merchantman, which flies the flag of a foreign country to shield its actions, may also be captured and tried by the State of said flag.

<sup>1</sup> *U. S. Treaty Series*, No. 814. Text also in Hudson, *International Legislation*, Vol. IV, pp. 2416-2419.

## ART. 3

The insurgent vessel, whether a warship or a merchantman, equipped by the rebels, which arrives at a foreign country or seeks refuge therein, shall be delivered by the Government of the latter to the constituted Government of the State in civil strife, and the members of the crew shall be considered as political refugees.

## ART. 4

The Present Convention does not affect obligations previously undertaken by the contracting parties through international agreements.

## ART. 5

After being signed, the present Convention shall be submitted to the ratification of the signatory States. The Government of Cuba is charged with transmitting authentic certified copies to the Governments for the aforementioned purpose of ratification. The instrument of ratification shall be deposited in the archives of the Pan American Union in Washington, the Union to notify the signatory governments of said deposit. Such notification shall be considered as an exchange of ratifications. This Convention shall remain open to the adherence of non-signatory States.

In witness whereof the afore-named Plenipotentiaries sign the present Convention in Spanish, English, French and Portuguese, in the city of Habana, the 20th day of February, 1928.<sup>2</sup>

<sup>2</sup> Ratifications: Brazil, Columbia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Haiti, Mexico, Nicaragua, Panama, United States of America, Uruguay.



## APPENDIX XIII

### ARGENTINE DRAFT CONVENTION ON THE RIGHT OF ASYLUM, SUBMITTED TO FOREIGN DIPLOMATIC REPRESENTATIVES, JULY, 1937<sup>1</sup>

#### (Translation)

The Governments of . . . impressed with the necessity of fixing the rules which they must observe in their mutual relations for the granting of political asylum;

Bearing in mind the instruments approved with that design in Montevideo, in the month of February, 1889, upon the celebration of the South American Congress on Private International Law, the treaty of penal international law; the dispositions established in the draft convention number 10 approved in March, 1927, in Río de Janeiro by the International Commission of American Jurisconsults; the Convention approved by the Sixth American International Conference which met in Havana in January and February, 1928, and the modifications which the Seventh American International Conference assembled in Montevideo in December, 1933, made in its text;

And with the purpose of coördinating the divers treaties in force with the practices followed in that which concerns the right of asylum and the juridical condition of political refugees;

Have resolved to conclude the present convention, for which purpose they have named as their plenipotentiaries, . . .

Who, after having exchanged their Full Powers, found in good and due form, have agreed upon the following:

#### Chapter I

##### INTERNAL ASYLUM

ARTICLE 1.—Political asylum may be granted to all persons, whatever their nationality, without prejudice to the obligations of protection which are incumbent upon the State to which they belong.

<sup>1</sup> República Argentina, Ministerio de Relaciones Exteriores y Culto, *Proyecto de Convención sobre Derecho de Asilo* (Buenos Aires, 1937). Supplied by the Argentine Government.

ART. 2.—Asylum may only be accorded in embassies, legations, war-ships, military encampments, or military aircraft, and is permitted exclusively to those who are pursued for political offenses or motives.

The heads of missions may also receive refugees in their residences, in the event that they do not live in the locale of embassies or legations.

ART. 3.—Asylum will not be accorded to those accused of common crimes who may have been duly prosecuted or who may have been sentenced by ordinary courts of justice.

Judgment of the causes motivating the asylum accrues to the State which grants it. To this effect must be taken into account, principally, the circumstances which occasion the asylum, as well as the political motive in related offenses. Terrorists may not receive the advantages of asylum.

Asylum may not be granted to deserters of land or sea forces. Should armed rebellion arise, it will be taken into account whether the act of not being present for service is invested with a political character.

ART. 4.—The diplomatic agent or the commander who accords asylum shall immediately communicate the names of the refugees to the Minister of Foreign Relations of the State where the act takes place, or to the administrative authority of the place, if it has occurred outside of the capital, unless serious circumstances materially hinder or make the communication dangerous for the security of the refugees.

ART. 5.—During the term of asylum refugees may not perform acts which might interfere with the public peace.

Diplomatic agents or commanders shall require of the refugees their personal data and the promise not to hold communication with the outside world without their express consent. If any of these conditions are refused or infringed, the diplomatic agent or commander will immediately bring the asylum to an end.

ART. 6.—The Government of the State may require that the refugee be removed from the national territory in the shortest possible time; and the diplomatic agent or commander who has granted the asylum may, for his part, require the necessary guarantees to ensure that the refugee may depart from the country with due regard for the inviolability of his person. Lacking such guarantees, the evacuation may be postponed until the local authorities furnish them.

ART. 7.—Once out of the country of origin, the refugees may not be disembarked at any point in that country. In the event that an ex-refugee should return to that country to take part in the movement which gave reason for the granting of asylum, such asylum may not be again granted to him by any of the High Contracting Parties.

ART. 8.—When the number of refugees exceeds the normal capacity of the places of refuge indicated in Article 2, the diplomatic agents or commanders may provide other places under the protection of their flag, for their safeguard and lodging. In such event they must ask the consent of the authorities.

ART. 9.—Warships or military aircraft that may be provisionally in dock-yards or workshops, for repairs, will offer no protection to those who seek asylum therein.

## Chapter II

### EXTERNAL ASYLUM

ARTICLE 10.—Asylum within the territory of the High Contracting Parties is inviolable for those pursued for political offenses or motives; but the nation of refuge is bound to prevent refugees from performing in its territory acts which endanger the public peace of the nation from which they have come.

Political émigrés may not be permitted to establish juntas or committees notoriously constituted for the purpose of promoting or fomenting disturbances in any one of the Contracting States. Such juntas or committees shall be dissolved, upon prior attestation of their subversive character, by the authorities of the State in which they are found.

The dissemination of ideas shall be governed by the legal dispositions of the country of refuge.

ART. 11.—Upon the request of the interested State, the State granting asylum shall place under vigilance or internment, at a prudent distance from its frontiers, those political émigrés who were notoriously directing a subversive movement, as well as those preparing to unite with it.

The appraising of the proof presented by the requesting State and the prudential character of the distance from the frontiers, for purposes of internment, shall depend upon the judgment of the authorities of the requested State.

ART. 12.—The expenses of every nature incurred by the internment of the refugees and political émigrés shall be defrayed by the State requesting it. For the subsistence of those interned, a sum will be fixed no greater than the minimum stipend established by the local laws or customs.

ART. 13.—Interned political émigrés may petition the Government of the State where they are located for their departure from its territory. This may be granted under condition that they do not proceed to the country from which they came and that notice be given to the interested Government.

## Chapter III

### GENERAL PROVISIONS

ARTICLE 14.—In case of disagreement over the application of political asylum, the Governments of the High Contracting Parties will consult among themselves in order to procure an amicable solution of the controversy which it may have been impossible to arrange through direct negotiation.

ART. 15.—Any state which has not subscribed to the present Convention may adhere to it, sending the respective instrument to the Ministry of

Foreign Relations of the Argentine Republic which will notify the other High Contracting Parties through the diplomatic channels.

ART. 16.—The present Convention shall be ratified by the High Contracting Parties in accordance with their constitutional procedures. The original Convention and the instruments of ratification shall be deposited with the Ministry of Foreign Relations of the Argentine Republic which shall communicate the ratifications through the diplomatic channels to the other Contracting States. The Convention will enter into force among the High Contracting Parties in the order in which they deposit their ratifications.

ART. 17.—This Convention will remain in force indefinitely, but may be denounced upon two years' notice, after the elapse of which it will cease to have effect for the denouncing State while continuing in force for the other signatory States. Denunciation shall be sent to the Ministry of Foreign Relations of the Argentine Republic, which will transmit it to the other Contracting States.

In witness whereof the afore-named Plenipotentiaries sign the present Convention, in Spanish and . . . and affix their respective seals. . . .

ARGENTINE NOTE COVERING THE SUBMISSION OF THE DRAFT CONVENTION,  
JULY 27, 1937 (Extract) <sup>2</sup>

(Translation)

In accordance with the tradition of Argentine international policy defined in 1889 by our delegate, Dr. Roque Sáenz Peña, before the South American Congress of Private International Law, assembled in Montevideo, this Chancellery has prepared the annexed draft on the practice of internal and external asylum. Experience acquired in the course of the current Spanish conflict furnishes the impulse to coördinate and improve the international instruments already existing, approved by the above-mentioned Congress and by the Pan American Conferences of Havana, in 1928, and of Montevideo, in 1933.

In soliciting from Your Excellency the mission of requesting the opinion of the Government which you so worthily represent, with respect to this draft, the Argentine Chancellery does so in the conviction that the international community has arrived at a degree of juridical conscience capable of making workable an instrument of this nature. This is proved by all the efforts made since the first Conference of The Hague, in 1899, to humanize war and, now in the struggle which rends the Spanish nation, it is attested by the action carried to an extreme by France and Great Britain, trying to save the greatest number of lives, by means of the evacuation of Bilbao, under the influence of an irrepressible instinct.

In such a way has the conflict moved the opinion of the world that, already in October of 1936, the governments of the two nations mentioned,

<sup>2</sup> *Proyecto, op. cit.*, pp. 7-11.

felt obliged to address themselves to the Argentine Government to ask it to unite its efforts with theirs in order to safeguard Spanish citizens detained in prisons of the Mother Country.

In order to protect their lives, endangered by the inflamed multitudes, many men, not only Spanish but of other nationalities, called at the doors of the Foreign Missions accredited to Madrid. And whatever were the opinions held by their respective governments regarding the practice of asylum, the result was that the majority of the embassies and legations listened to the plea that was made to them. This was done, among the Europeans, by the diplomatic representatives of Belgium, Finland, France, Norway, The Netherlands, Poland, Roumania and Turkey. Among the Americans, those of Argentina, Bolivia, Cuba, Chile, Haiti, Mexico, Panama, Peru and the Dominican Republic. Even the Legation of China, before retiring from the Spanish capital, acted diligently and obtained the evacuation of the few who had sought refuge with it.

It could not have happened otherwise. Concepts of the practice of asylum may vary according to judgment, as is shown in their various viewpoints by authors of treatises upon international laws. But enduring and immutable are the sentiments which, from the most remote antiquity, gave origin to the establishment of places of refuge for the persecuted. Whether or not asylum, indispensable in the whirlpool of political strife, be founded upon an extension of the sovereignty of nations, or upon the concept of extraterritoriality of ships of war or upon that of diplomatic immunities, the truth is that it is infused with the practical satisfaction of the noble impulse which inspires it. It treats of the saving of lives before imminent dangers, and the international community cannot fail to respond to a humanitarian duty, so much the more intense as its spirit is the more saddened by contemplation of a conflict which is bleeding a nation.

Nevertheless, a resistance to accepting the right of asylum has been maintained among the governments of Europe and in the opinion of numerous authors of treatises, demonstrating the slowness of evolution in certain cases of the recognition of a legitimate need for conversion into juridical rule. However, everything encourages one to think that it has been advancing in the aspiration of those who believe in the perfecting of law. Under the influence of circumstances which impose it, its application, accidental in certain cases but in others repeated, must produce its confirmation. To demonstrate it, it would be sufficient to record the repetition of acts, scattered in all the works of international law which have been produced since the famous asylum given in 1726 to the Duke of Ripperda in the British Embassy in Madrid which succeeded in compromising the relations of Great Britain with Spain. . . .

[Here follow numerous historical instances of the granting of asylum and a discussion of efforts to regulate it.]

Such acts demonstrate, in the judgment of this Chancellery, that the opportunity has arrived to consecrate this practice, so worthily followed in

recent times. It is fitting to give it the definitive form of a Convention which should incorporate it into the juridical rules in order to raise it above the vicissitudes conceivable in moments of passion and agitation.

The idea of systematizing it, and, therefore, of eliminating abuses contrary to the dignity of its motives, is required for the security of States, and the history of events shows us that in cases, fortunately limited, deviations may occur which alter the respect that it merits from those countries which grant it or practice it. As was said in the course of the debates at the Congress of Montevideo: "The blood of those who are victims of the persecutions of power will not be spilled if they succeed in finding protection under a foreign shield; but that shield will shelter neither seditious persons nor rebels, whose action doubles itself in activity as result of the impunity which they enjoy."

The Spanish convulsion has represented in all its phases a terrible experiment for the application and dominion of moral and juridical doctrine. Those who maintain confidence in the progress of law and in the struggle for its definitive reign, in spite of the most anguishing conflicts, will consider it necessary to profit by the wealth of lessons of which it gives witness. Asylum has proved, definitely, to be one of the few forms capable of imposing, between both contending parties, a note of human piety over the horrors of civil war. We are certain of concurring with the desire of the Chancelleries which have overly labored and persevered in limiting this conflict, even more grievous for those countries who see it with sentiments derived from their ancestral origins, and who, conserving their faith in final solutions would aspire, at least, to a humanizing of the strife, which very fact would involve a germ of pacification.

Such experience has originated the reforms which the present draft contains regarding the conventions approved in the Congress of Montevideo and in the Pan American Conferences previously cited. In the exposition of motives will be given the very precise fundamentals of these innovations. I call them to the attention of Your Excellency in order that you may make them known to your Government, asking it for its worthy opinion.

The draft which the Argentine Chancellery has prepared combines the international instruments which are mentioned, coördinating them while enlarging them, in distinct chapters which correspond to internal and external asylum. To establish this plan, the institution has been qualified in conformity with the results which it is to produce within and without the State; it thus corresponds with the nomenclature employed by the modern doctrine of international law. It also takes into account the lessons gathered from the unhappy internal conflicts which have taken place, and to that end has incorporated into its precepts the following provisions:

(a) It is not limited to political offense, but refers equally to political motives and related offenses.

(b) It excludes terrorists from benefit of asylum.

(c) It permits the enlarging of places of authorized asylum by heads of Missions and warships.

(d) Norms of conduct are fixed for the refugees.

(e) Sanctions are established for the refugee who returns to the country to intervene in the movement which gave reason for his asylum.

(f) Internment is also regulated.

The Chancellery is thinking of sending the present draft to the Pan American Union that it may be included in the program of the next Conference to be held at Lima. If, as there is room to hope, a goodly number of European and American governments concur with the Argentine in the opportuneness of such an initiative, it would be possible, from now on, to give definite form to a multilateral pact. This would reveal the maturity of that juridical evolution to which we have already alluded, putting into relief a universal desire which ought to have sufficient force and decisiveness to be crystallized into norms of permanent law.

I have the honor, etc.,

(Signed) CARLOS SAAVEDRA LAMAS.





## APPENDIX XIV

### MEASURES ADOPTED BY THE GOVERNMENT OF THE UNITED STATES

1. JOINT RESOLUTION TO PROHIBIT THE EXPORTATION OF ARMS, AMMUNITION, AND IMPLEMENTS OF WAR FROM THE UNITED STATES TO SPAIN, JANUARY 8, 1937<sup>1</sup>

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That during the existence of the state of civil strife now obtaining in Spain it shall, from and after the approval of this Resolution be unlawful to export arms, ammunition, or implements of war from any place in the United States, or possessions of the United States, to Spain or to any other foreign country for transshipment to Spain or for use of either of the opposing forces in Spain. Arms, ammunition, or implements of war, the exportation of which is prohibited by this Resolution, are those enumerated in the President's Proclamation No. 2163 of April 10, 1936.

Licenses heretofore issued under existing law for the exportation of arms, ammunition, or implements of war to Spain shall, as to all future exportations thereunder, *ipso facto* be deemed to be cancelled.

Whoever in violation of any of the provisions of this Resolution shall export, or attempt to export, or cause to be exported either directly or indirectly, arms, ammunition, or implements of war from the United States or any of its possessions, shall be fined not more than ten thousand dollars or imprisoned not more than five years, or both.

When in the judgment of the President the conditions described in this Resolution have ceased to exist, he shall proclaim such fact, and the provisions hereof shall thereupon cease to apply.

Approved, January 8, 1937, at 12:30 p. m.

2. JOINT RESOLUTION PROVIDING FOR THE PROHIBITION OF THE EXPORT OF ARMS, AMMUNITION, AND IMPLEMENTS OF WAR, ETC., MAY 1, 1937<sup>2</sup>

#### Joint Resolution

To amend the joint resolution entitled "Joint resolution providing for the prohibition of the export of arms, ammunition, and implements of war to

<sup>1</sup> Public Resolution—No. 1—75th Congress. [Chapter 1—1st Session] [S. J. Res. 3]. Text also in *A. J. I. L.*, Vol. xxxi (April, 1937), Supplement, pp. 102-103.

<sup>2</sup> Public Resolution—No. 27—75th Congress. [Chapter 146—1st Session] [S. J. Res. 51]. Text also in *A. J. I. L.*, Vol. xxxi (July, 1937), Supplement, pp. 147-155.

belligerent countries; the prohibition of the transportation of arms, ammunition, and implements of war by vessels of the United States for the use of belligerent states; for the registration and licensing of persons engaged in the business of manufacturing, exporting, or importing arms, ammunition, or implements of war; and restricting travel by American citizens on belligerent ships during war", approved August 31, 1935, as amended.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That the joint resolution entitled "Joint resolution providing for the prohibition of the export of arms, ammunition, and implements of war to belligerent countries; the prohibition of the transportation of arms, ammunition, and implements of war by vessels of the United States for the use of belligerent states; for the registration and licensing of persons engaged in the business of manufacturing, exporting, or importing arms, ammunition, or implements of war; and restricting travel by American citizens on belligerent ships during war", approved August 31, 1935, as amended, is amended to read as follows:

"EXPORT OF ARMS, AMMUNITION, AND IMPLEMENTS OF WAR

"SECTION 1. (a) Whenever the President shall find that there exists a state of war between, or among, two or more foreign states, the President shall proclaim such fact, and it shall thereafter be unlawful to export, or attempt to export, or cause to be exported, arms, ammunition, or implements of war from any place in the United States to any belligerent state named in such proclamation, or to any neutral state for transshipment to, or for the use of, any such belligerent state.

"(b) The President shall, from time to time, by proclamation, extend such embargo upon the export of arms, ammunition, or implements of war to other states as and when they may become involved in such war.

"(c) Whenever the President shall find that a state of civil strife exists in a foreign state and that such civil strife is of a magnitude or is being conducted under such conditions that the export of arms, ammunition, or implements of war from the United States to such foreign state would threaten or endanger the peace of the United States, the President shall proclaim such fact, and it shall thereafter be unlawful to export, or attempt to export, or cause to be exported, arms, ammunition, or implements of war from any place in the United States to such foreign state, or to any neutral state for transshipment to, or for the use of, such foreign state.

"(d) The President shall, from time to time by proclamation, definitely enumerate the arms, ammunition, and implements of war, the export of which is prohibited by this section. The arms, ammunition, and implements of war so enumerated shall include those enumerated in the President's proclamation Numbered 2163, of April 10, 1936, but shall not include raw materials or any other articles or materials not of the same general character as those enumerated in the said proclamation, and in the Convention for the Super-

vision of the International Trade in Arms and Ammunition and in Implements of War, signed at Geneva June 17, 1925.

“(e) Whoever, in violation of any of the provisions of this Act, shall export, or attempt to export, or cause to be exported, arms, ammunition, or implements of war from the United States shall be fined not more than \$10,000, or imprisoned not more than five years, or both, and the property, vessel, or vehicle containing the same shall be subject to the provisions of sections 1 to 8, inclusive, title 6, chapter 30, of the Act approved June 15, 1917 (40 Stat. 223-225; U. S. C., 1934 ed., title 22, secs. 238-245).

“(f) In the case of the forfeiture of any arms, ammunition or implements of war by reason of a violation of this Act, no public or private sale shall be required; but such arms, ammunition, or implements of war shall be delivered to the Secretary of War for such use or disposal thereof as shall be approved by the President of the United States.

“(g) Whenever, in the judgment of the President, the conditions which have caused him to issue any proclamation under the authority of this section have ceased to exist, he shall revoke the same, and the provisions of this section shall thereupon cease to apply with respect to the state or states named in such proclamation, except with respect to offenses committed, or forfeitures incurred, prior to such revocation.

#### “EXPORT OF OTHER ARTICLES AND MATERIALS

“SEC. 2. (a) Whenever the President shall have issued a proclamation under the authority of section 1 of this Act and he shall thereafter find that the placing of restrictions on the shipment of certain articles or materials in addition to arms, ammunition, and implements of war from the United States to belligerent states, or to a state wherein civil strife exists, is necessary to promote the security or preserve the peace of the United States or to protect the lives of citizens of the United States, he shall so proclaim, and it shall thereafter be unlawful, except under such limitations and exceptions as the President may prescribe as to lakes, rivers, and inland waters bordering on the United States, and as to transportation on or over lands bordering on the United States, for any American vessel to carry such articles or materials to any belligerent state, or to any state wherein civil strife exists, named in such proclamation issued under the authority of section 1 of this Act, or to any neutral state for transshipment to, or for the use of, any such belligerent state or any such state wherein civil strife exists. The President shall by proclamation from time to time definitely enumerate the articles and materials which it shall be unlawful for American vessels to so transport.

“(b) Whenever the President shall have issued a proclamation under the authority of section 1 of this Act and he shall thereafter find that the placing of restrictions on the export of articles or materials from the United States to belligerent states, or to a state wherein civil strife exists, is necessary to promote the security or preserve the peace of the United States or to protect the lives or commerce of citizens of the United States, he shall so proclaim,

and it shall thereafter be unlawful, except under such limitations and exceptions as the President may prescribe as to lakes, rivers, and inland waters bordering on the United States, and as to transportation on or over land bordering on the United States, to export or transport, or attempt to export or transport, or cause to be exported or transported, from the United States to any belligerent state, or to any state wherein civil strife exists, named in such proclamation issued under the authority of section 1 of this Act, or to any neutral state for transshipment to, or for the use of, any such belligerent state or any such state wherein civil strife exists, any articles or materials whatever until all right, title, and interest therein shall have been transferred to some foreign government, agency, institution, association, partnership, corporation, or national. The shipper of such articles or materials shall be required to file with the collector of the port from which they are to be exported a declaration under oath that there exists in citizens of the United States no right, title, or interest in such articles or materials, and to comply with such rules and regulations as shall be promulgated from time to time by the President. Any such declaration so filed shall be a conclusive estoppel against any claim of any citizen of the United States of right, title, or interest in such articles or materials. Insurance written by underwriters on any articles or materials the export of which is prohibited by this Act, or on articles or materials carried by an American vessel in violation of subsection (a) of this section, shall not be deemed an American interest therein, and no insurance policy issued on such articles or materials and no loss incurred thereunder or by the owner of the vessel carrying the same shall be made a basis of any claim put forward by the Government of the United States.

“(c) The President shall from time to time by proclamation extend such restrictions as are imposed under the authority of this section to other states as and when they may be declared to become belligerent states under proclamations issued under the authority of section 1 of this Act.

“(d) The President may from time to time change, modify, or revoke in whole or in part any proclamations issued by him under the authority of this section.

“(e) Except with respect to offenses committed, or forfeitures incurred, prior to May 1, 1939, this section and all proclamations issued thereunder shall not be effective after May 1, 1939.

#### “FINANCIAL TRANSACTIONS

“SEC. 3. (a) Whenever the President shall have issued a proclamation under the authority of section 1 of this Act, it shall thereafter be unlawful for any person within the United States to purchase, sell, or exchange bonds, securities, or other obligations of the government of any belligerent state or of any state wherein civil strife exists, named in such proclamation, or of any political subdivision of any such state, or of any person acting for or on behalf of the government of any such state, or of any faction or asserted government within any such state wherein civil strife exists, or of any person acting for or on behalf of any faction or asserted government within any

such state wherein civil strife exists, issued after the date of such proclamation, or to make any loan or extend any credit to any such government, political subdivision, faction, asserted government, or person, or to solicit or receive any contribution for any such government, political subdivision, faction, asserted government, or person: *Provided*, That if the President shall find that such action will serve to protect the commercial or other interests of the United States or its citizens, he may, in his discretion, and to such extent and under such regulations as he may prescribe, except from the operation of this section ordinary commercial credits and short-time obligations in aid of legal transactions and of a character customarily used in normal peacetime commercial transactions. Nothing in this subsection shall be construed to prohibit the solicitation or collection of funds to be used for medical aid and assistance, or for food and clothing to relieve human suffering, when such solicitation or collection of funds is made on behalf of and for use by any person or organization which is not acting for or on behalf of any such government, political subdivision, faction, or asserted government, but all such solicitations and collections of funds shall be subject to the approval of the President and shall be made under such rules and regulations as he shall prescribe.

“(b) The provisions of this section shall not apply to a renewal or adjustment of such indebtedness as may exist on the date of the President’s proclamation.

“(c) Whoever shall violate the provisions of this section or of any regulations issued hereunder shall, upon conviction thereof, be fined not more than \$50,000 or imprisoned for not more than five years, or both. Should the violation be by a corporation, organization, or association, each officer or agent thereof participating in the violation may be liable to the penalty herein prescribed.

“(d) Whenever the President shall have revoked any such proclamation issued under the authority of section 1 of this Act, the provisions of this section and of any regulations issued by the President hereunder shall thereupon cease to apply with respect to the state or states named in such proclamation, except with respect to offenses committed prior to such revocation.

#### “EXCEPTIONS—AMERICAN REPUBLICS

“SEC. 4. This Act shall not apply to an American republic or republics engaged in war against a non-American state or states, provided the American republic is not cooperating with a non-American state or states in such war.

#### “NATIONAL MUNITIONS CONTROL BOARD

“SEC. 5. (a) There is hereby established a National Munitions Control Board (hereinafter referred to as the ‘Board’) to carry out the provisions of this Act. The Board shall consist of the Secretary of State, who shall be chairman and executive officer of the Board, the Secretary of the Treasury, the Secretary of War, the Secretary of the Navy, and the Secretary of

Commerce. Except as otherwise provided in this Act, or by other law, the administration of this Act is vested in the Department of State. The Secretary of State shall promulgate such rules and regulations with regard to the enforcement of this section as he may deem necessary to carry out its provisions. The Board shall be convened by the chairman and shall hold at least one meeting a year.

“(b) Every person who engages in the business of manufacturing, exporting, or importing any of the arms, ammunition, or implements of war referred to in this Act, whether as an exporter, importer, manufacturer, or dealer, shall register with the Secretary of State his name, or business name, principal place of business, and places of business in the United States, and a list of the arms, ammunition, and implements of war which he manufactures, imports, or exports.

“(c) Every person required to register under this section shall notify the Secretary of State of any change in the arms, ammunition, or implements of war which he exports, imports, or manufactures; and upon such notification the Secretary of State shall issue to such person an amended certificate of registration, free of charge, which shall remain valid until the date of expiration of the original certificate. Every person required to register under the provisions of this section shall pay a registration fee of \$500, unless he manufactured, exported, or imported arms, ammunition, and implements of war to a total sales value of less than \$50,000 during the twelve months immediately preceding his registration, in which case he shall pay a registration fee of \$100. Upon receipt of the required registration fee, the Secretary of State shall issue a registration certificate valid for five years, which shall be renewable for further periods of five years upon the payment for each renewal of a fee of \$500 in the case of persons who manufactured, exported, or imported arms, ammunition, and implements of war to a total sales value of more than \$50,000 during the twelve months immediately preceding the renewal, or a fee of \$100 in the case of persons who manufactured, exported, or imported arms, ammunition, and implements of war to a total sales value of less than \$50,000 during the twelve months immediately preceding the renewal. The Secretary of the Treasury is hereby directed to refund, out of any moneys in the Treasury not otherwise appropriated, the sum of \$400 to every person who shall have paid a registration fee of \$500 pursuant to this Act, who manufactured, exported, or imported arms, ammunition, and implements of war to a total sales value of less than \$50,000 during the twelve months immediately preceding his registration.

“(d) It shall be unlawful for any person to export, or attempt to export, from the United States to any other state, any of the arms, ammunition, or implements of war referred to in this Act, or to import, or attempt to import, to the United States from any other state, any of the arms, ammunition, or implements of war referred to in this Act, without first having obtained a license therefor.

“(e) All persons required to register under this section shall maintain,

subject to the inspection of the Secretary of State, or any person or persons designated by him, such permanent records of manufacture for export, importation, and exportation of arms, ammunition, and implements of war as the Secretary of State shall prescribe.

“(f) Licenses shall be issued to persons who have registered as herein provided for, except in cases of export or import licenses where the export of arms, ammunition, or implements of war would be in violation of this Act or any other law of the United States, or of a treaty to which the United States is a party, in which cases such licenses shall not be issued.

“(g) Whenever the President shall have issued a proclamation under the authority of section 1 of this Act, all licenses theretofore issued under this Act shall ipso facto and immediately upon the issuance of such proclamation, cease to grant authority to export arms, ammunition, or implements of war from any place in the United States to any belligerent state, or to any state wherein civil strife exists, named in such proclamation, or to any neutral state for transshipment to, or for the use of, any such belligerent state or any such state wherein civil strife exists; and said licenses, in so far as the grant of authority to export to the state or states named in such proclamation is concerned, shall be null and void.

“(h) No purchase of arms, ammunition, or implements of war shall be made on behalf of the United States by any officer, executive department, or independent establishment of the Government from any person who shall have failed to register under the provisions of this Act.

“(i) The provisions of the Act of August 29, 1916, relating to the sale of ordnance and stores to the Government of Cuba (39 Stat. 619, 643; U. S. C., 1934 ed., title 50, sec. 72), are hereby repealed as of December 31, 1937.

“(j) The Board shall make an annual report to Congress, copies of which shall be distributed as are other reports transmitted to Congress. Such reports shall contain such information and data collected by the Board as may be considered of value in the determination of questions connected with the control of trade in arms, ammunition, and implements of war. The Board shall include in such reports a list of all persons required to register under the provisions of this Act, and full information concerning the licenses issued hereunder.

“(k) The President is hereby authorized to proclaim upon recommendation of the Board from time to time a list of articles which shall be considered arms, ammunition, and implements of war for the purposes of this section.

“AMERICAN VESSELS PROHIBITED FROM CARRYING ARMS TO  
BELLIGERENT STATES

“SEC. 6. (a) Whenever the President shall have issued a proclamation under the authority of section 1 of this Act, it shall thereafter be unlawful, until such proclamation is revoked, for any American vessel to carry any arms, ammunition, or implements of war to any belligerent state, or to any

state wherein civil strife exists, named in such proclamation, or to any neutral state for transshipment to, or for the use of, any such belligerent state or any such state wherein civil strife exists.

“(b) Whoever, in violation of the provisions of this section, shall take, or attempt to take, or shall authorize, hire, or solicit another to take, any American vessel carrying such cargo out of port or from the jurisdiction of the United States shall be fined not more than \$10,000, or imprisoned not more than five years, or both; and, in addition, such vessel, and her tackle, apparel, furniture, and equipment, and the arms, ammunition, and implements of war on board, shall be forfeited to the United States.

“USE OF AMERICAN PORTS AS BASE OF SUPPLY

“SEC. 7. (a) Whenever, during any war in which the United States is neutral, the President, or any person thereunto authorized by him, shall have cause to believe that any vessel, domestic or foreign, whether requiring clearance or not, is about to carry out of a port of the United States, fuel, men, arms, ammunition, implements of war, or other supplies to any warship, tender, or supply ship of a belligerent state, but the evidence is not deemed sufficient to justify forbidding the departure of the vessel as provided for by section 1, title V, chapter 30, of the Act approved June 15, 1917 (40 Stat. 217, 221; U. S. C., 1934 ed., title 18, sec. 31), and if, in the President's judgment, such action will serve to maintain peace between the United States and foreign states, or to protect the commercial interests of the United States and its citizens, or to promote the security or neutrality of the United States, he shall have the power and it shall be his duty to require the owner, master, or person in command thereof, before departing from a port of the United States, to give a bond to the United States, with sufficient sureties, in such amount as he shall deem proper, conditioned that the vessel will not deliver the men, or any part of the cargo, to any warship, tender, or supply ship of a belligerent state.

“(b) If the President, or any person thereunto authorized by him, shall find that a vessel, domestic or foreign, in a port of the United States, has previously cleared from a port of the United States during such war and delivered its cargo or any part thereof to a warship, tender, or supply ship of a belligerent state, he may prohibit the departure of such vessel during the duration of the war.

“SUBMARINES AND ARMED MERCHANT VESSELS

“SEC. 8. Whenever, during any war in which the United States is neutral, the President shall find that special restrictions placed on the use of the ports and territorial waters of the United States by the submarines or armed merchant vessels of a foreign state, will serve to maintain peace between the United States and foreign states, or to protect the commercial interests of the United States and its citizens, or to promote the security of the United States, and shall make proclamation thereof, it shall thereafter be unlawful



for any such submarine or armed merchant vessel to enter a port or the territorial waters of the United States or to depart therefrom, except under such conditions and subject to such limitations as the President may prescribe. Whenever, in his judgment, the conditions which have caused him to issue his proclamation have ceased to exist, he shall revoke his proclamation and the provisions of this section shall thereupon cease to apply.

“TRAVEL ON VESSELS OF BELLIGERENT STATES

“SEC. 9. Whenever the President shall have issued a proclamation under the authority of section 1 of this Act it shall thereafter be unlawful for any citizen of the United States to travel on any vessel of the state or states named in such proclamation, except in accordance with such rules and regulations as the President shall prescribe: *Provided, however*, That the provisions of this section shall not apply to a citizen of the United States traveling on a vessel whose voyage was begun in advance of the date of the President's proclamation, and who had no opportunity to discontinue his voyage after that date: *And provided further*, That they shall not apply under ninety days after the date of the President's proclamation to a citizen of the United States returning from a foreign state to the United States. Whenever, in the President's judgment, the conditions which have caused him to issue his proclamation have ceased to exist, he shall revoke his proclamation and the provisions of this section shall thereupon cease to apply with respect to the state or states named in such proclamation, except with respect to offenses committed prior to such revocation.

“ARMING OF AMERICAN MERCHANT VESSELS PROHIBITED

“SEC. 10. Whenever the President shall have issued a proclamation under the authority of section 1, it shall thereafter be unlawful, until such proclamation is revoked, for any American vessel engaged in commerce with any belligerent state, or any state wherein civil strife exists, named in such proclamation, to be armed or to carry any armament, arms, ammunition, or implements of war, except small arms and ammunition therefor which the President may deem necessary and shall publicly designate for the preservation of discipline aboard such vessels.

“REGULATIONS

“SEC. 11. The President may, from time to time, promulgate such rules and regulations, not inconsistent with law, as may be necessary and proper to carry out any of the provisions of this Act; and he may exercise any power or authority conferred on him by this Act through such officer or officers, or agency or agencies, as he shall direct.

“GENERAL PENALTY PROVISION

“SEC. 12. In every case of the violation of any of the provisions of this Act or of any rule or regulation issued pursuant thereto where a specific

penalty is not herein provided, such violator or violators, upon conviction, shall be fined not more than \$10,000, or imprisoned not more than five years, or both.

#### "DEFINITIONS

"SEC. 13. For the purposes of this Act—

"(a) The term 'United States', when used in a geographical sense, includes the several States and Territories, the insular possessions of the United States (including the Philippine Islands) the Canal Zone, and the District of Columbia.

"(b) The term 'person' includes a partnership, company, association, or corporation, as well as a natural person.

"(c) The term 'vessel' means every description of watercraft (including aircraft) or other contrivance used, or capable of being used, as a means of transportation on, under, or over water.

"(d) The term 'American vessel' means any vessel (including aircraft) documented under the laws of the United States.

"(e) The term 'vehicle' means every description of carriage (including aircraft) or other contrivance used, or capable of being used, as a means of transportation on or over land.

"(f) The term 'state' shall include nation, government, and country.

#### "SEPARABILITY OF PROVISIONS

"SEC. 14. If any of the provisions of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

#### "APPROPRIATIONS

"SEC. 15. There is hereby authorized to be appropriated from time to time, out of any money in the Treasury not otherwise appropriated, such amounts as may be necessary to carry out the provisions and accomplish the purposes of this Act."

Approved, May 1, 1937, 6.30 p. m., Central Standard Time.

### 3. A PROCLAMATION CONCERNING THE EXPORT OF ARMS, AMMUNITION, AND IMPLEMENTS OF WAR TO SPAIN BY THE PRESIDENT OF THE UNITED STATES OF AMERICA, MAY 1, 1937<sup>3</sup>

WHEREAS Section 1 of the Joint Resolution of Congress approved May 1, 1937, amending the joint resolution entitled "Joint Resolution providing for the prohibition of the export of arms, ammunition, and implements of war to belligerent countries; the prohibition of the transportation of arms, am-

<sup>3</sup> Department of State, *Press Releases*, Vol. xvi, No. 396, May 1, 1937. Text also in *A. J. I. L.*, Vol. xxxi (July, 1937), Supplement, pp. 156-160.

munition, and implements of war by vessels of the United States for the use of belligerent states; for the registration and licensing of persons engaged in the business of manufacturing, exporting, or importing arms, ammunition, or implements of war; and restricting travel by American citizens on belligerent ships during war", approved August 31, 1935, as amended February 29, 1936, provides in part as follows:

"Whenever the President shall find that a state of civil strife exists in a foreign state and that such civil strife is of a magnitude or is being conducted under such conditions that the export of arms, ammunition, or implements of war from the United States to such foreign state would threaten or endanger the peace of the United States, the President shall proclaim such fact, and it shall thereafter be unlawful to export, or attempt to export, or cause to be exported, arms, ammunition, or implements of war from any place in the United States to such foreign state, or to any neutral state for transshipment to, or for the use of, such foreign state."

AND WHEREAS it is further provided by Section 1 of the said Joint Resolution that

"The President shall, from time to time by proclamation, definitely enumerate the arms, ammunition, and implements of war, the export of which is prohibited by this section. The arms, ammunition, and implements of war so enumerated shall include those enumerated in the President's proclamation Numbered 2163, of April 10, 1936, but shall not include raw materials or any other articles or materials not of the same general character as those enumerated in the said proclamation, and in the Convention for the Supervision of the International Trade in Arms and Ammunition and in Implements of War, signed at Geneva June 17, 1925."

AND WHEREAS it is further provided by Section 1 of the said Joint Resolution that

"Whoever, in violation of any of the provisions of this Act, shall export, or attempt to export, or cause to be exported, arms, ammunition, or implements of war from the United States shall be fined not more than \$10,000, or imprisoned not more than five years, or both, and the property, vessel, or vehicle containing the same shall be subject to the provisions of sections 1 to 8, inclusive, title 6, chapter 30, of the Act approved June 15, 1917 (40 Stat. 223-225; U. S. C., 1934 ed., title 22, secs. 238-245)."

AND WHEREAS it is further provided by Section 1 of the said Joint Resolution that

"In the case of the forfeiture of any arms, ammunition, or implements of war by reason of a violation of this Act, no public or private sale shall be required; but such arms, ammunition, or implements of war shall be delivered to the Secretary of War for such use or disposal thereof as shall be approved by the President of the United States."

AND WHEREAS it is further provided by Section 11 of the said Joint Resolution that

"The President may, from time to time, promulgate such rules and regulations, not inconsistent with law, as may be necessary and proper to carry out any of the provisions of this Act; and he may exercise any power or authority conferred on him by this Act through such officer or officers, or agency or agencies, as he shall direct."

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, acting under and by virtue of the authority conferred on me by the said Joint Resolution, do hereby proclaim that a state of civil strife unhappily exists in Spain and that such civil strife is of a magnitude and is being conducted under such conditions that the export of arms, ammunition, or implements of war from the United States to Spain would threaten and endanger the peace of the United States, and I do hereby admonish all citizens of the United States, or any of its possessions, and all persons residing or being within the territory or jurisdiction of the United States, or its possessions, to abstain from every violation of the provisions of the joint resolution above set forth, hereby made effective and applicable to the export of arms, ammunition, or implements of war from any place in the United States to Spain or to any other state for transshipment to, or for the use of, Spain.

And I do hereby declare and proclaim that the articles listed below shall be considered arms, ammunition, and implements of war for the purposes of Section 1 of the said Joint Resolution of Congress:

*Category I:*

- (1) Rifles and carbines using ammunition in excess of caliber .22, and barrels for those weapons;
- (2) Machine guns, automatic or autoloading rifles, and machine pistols using ammunition in excess of caliber .22, and barrels for those weapons;
- (3) Guns, howitzers, and mortars of all calibers, their mountings and barrels;
- (4) Ammunition in excess of caliber .22 for the arms enumerated under (1) and (2) above, and cartridge cases or bullets for such ammunition; filled and unfilled projectiles for the arms enumerated under (3) above;
- (5) Grenades, bombs, torpedoes, mines and depth charges, filled or unfilled, and apparatus for their use or discharge;
- (6) Tanks, military armored vehicles, and armored trains.

*Category II:*

Vessels of war of all kinds, including aircraft carriers and submarines, and armor plate for such vessels.

*Category III:*

- (1) Aircraft, unassembled, assembled, or dismantled, both heavier and lighter than air, which are designed, adapted, and intended for aerial combat by the use of machine guns or of artillery or for the carrying and dropping of bombs, or which are equipped with, or which by reason of design or construc-

tion are prepared for, any of the appliances referred to in paragraph (2) below;

(2) Aerial gun mounts and frames, bomb racks, torpedo carriers, and bomb or torpedo release mechanisms.

*Category IV:*

(1) Revolvers and automatic pistols using ammunition in excess of caliber .22;

(2) Ammunition in excess of caliber .22 for the arms enumerated under (1) above, and cartridge cases or bullets for such ammunition.

*Category V:*

(1) Aircraft, unassembled, assembled or dismantled, both heavier and lighter than air, other than those included in Category III;

(2) Propellers or air screws, fuselages, hulls, wings, tail units, and under-carriage units;

(3) Aircraft engines, unassembled, assembled, or dismantled.

*Category VI:*

(1) Livens projectors and flame throwers;

- (2) *a.* Mustard gas (dichlorethyl sulphide);  
*b.* Lewisite (chlorvinylchlorarsine and dichlorovinylchlorarsine);  
*c.* Methylchlorarsine;  
*d.* Diphenylchlorarsine;  
*e.* Diphenylcyanarsine;  
*f.* Diphenylaminechlorarsine;  
*g.* Phenylchlorarsine;  
*h.* Ethylchlorarsine;  
*i.* Phenyl dibromarsine;  
*j.* Ethyl dibromarsine;  
*k.* Phosgene;  
*l.* Monochloromethylchlorformate;  
*m.* Trichloromethylchlorformate (diphosgene);  
*n.* Dichlorodimethyl Ether;  
*o.* Dibromodimethyl Ether;  
*p.* Cyanogen Chloride;  
*q.* Ethylbromacetate;  
*r.* Ethyliodoacetate;  
*s.* Brombenzylcyanide;  
*t.* Bromacetone;  
*u.* Brommethyl ethyl ketone.

*Category VII:*

(1) Propellant powders;

(2) High explosives as follows:

- a.* Nitrocellulose having a nitrogen content of more than 12%;

- b. Trinitrotoluene;
- c. Trinitroxylenes;
- d. Tetryl (trinitrophenol methyl nitramine or tetranitro methyl-aniline);
- e. Picric acid;
- f. Ammonium picrate;
- g. Trinitroanisole;
- h. Trinitronaphthalene;
- i. Tetranitronaphthalene;
- j. Hexanitrodiphenylamine;
- k. Pentaerythritetetranitrate (Penthrate or Pentrite);
- l. Trimethylenetrinitramine (Hexogen or T<sub>4</sub>);
- m. Potassium nitrate powders (black saltpeter powder);
- n. Sodium nitrate powders (black soda powder);
- o. Amatol (mixture of ammonium nitrate and trinitrotoluene);
- p. Ammonal (mixture of ammonium nitrate, trinitrotoluene, and powdered aluminium, with or without other ingredients);
- q. Schneiderite (mixture of ammonium nitrate and dinitronaphthalene, with or without other ingredients).

And I do hereby enjoin upon all officers of the United States, charged with the execution of the laws thereof, the utmost diligence in preventing violations of the said Joint Resolution, and this my proclamation issued thereunder, and in bringing to trial and punishment any offenders against the same.

And I do hereby delegate to the Secretary of State the power to exercise any power or authority conferred on me by the said Joint Resolution, as made effective by this my proclamation issued thereunder, and the power to promulgate such rules and regulations not inconsistent with law as may be necessary and proper to carry out any of its provisions.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

Done at the city of Washington this first day of May, in the year of our Lord Nineteen hundred and thirty-seven, and of the Independence of the United States of America the one hundred and sixty-first.

FRANKLIN D. ROOSEVELT.

By the President :

CORDELL HULL,  
*Secretary of State.*

#### 4. ANNOUNCEMENT BY THE SECRETARY OF STATE REGARDING THE CARRIAGE OF ARMS BY AMERICAN VESSELS SAILING TOWARD SPAIN, MAY 1, 1937 <sup>4</sup>

Section 10 of the joint resolution of Congress approved May 1, 1937, amending the joint resolution approved August 31, 1935, provides as follows :

<sup>4</sup> *Press Releases*, Vol. xvi, May 1, 1937, pp. 294-295.

"SEC. 10. Whenever the President shall have issued a proclamation under the authority of Section 1, it shall thereafter be unlawful, until such proclamation is revoked, for any American vessel engaged in commerce with any belligerent state, or any state wherein civil strife exists, named in such proclamation, to be armed or to carry any armament, arms, ammunition, or implements of war, except small arms and ammunition therefor which the President may deem necessary and shall publicly designate for the preservation of discipline aboard such vessels."

Section 11 of the said joint resolution provides as follows:

"SEC. 11. The President may, from time to time, promulgate such rules and regulations, not inconsistent with law, as may be necessary and proper to carry out any of the provisions of this Act; and he may exercise any power or authority conferred on him by this Act through such officer or officers, or agency or agencies, as he shall direct."

The President's proclamation of May 1, 1937, issued pursuant to the provisions of Section 1 of the above-mentioned joint resolution provides in part as follows:

"And I do hereby delegate to the Secretary of State the power to exercise any power or authority conferred on me by the said joint resolution, as made effective by this my proclamation issued thereunder, and the power to promulgate such rules and regulations not inconsistent with law as may be necessary and proper to carry out any of its provisions."

In pursuance of those provisions of the law and of the President's proclamation of May 1, 1937, which are quoted above, the Secretary of State announces that American vessels engaged in commerce with Spain may carry such small arms and ammunition as the masters of these vessels may deem indispensable for the preservation of discipline aboard the vessels.





## APPENDIX XV

### INTERFERENCE WITH FOREIGN SHIPPING DURING THE SPANISH CIVIL STRIFE <sup>1</sup>

#### I

#### INTERFERENCE BY SURFACE CRAFT

1936

- Aug. 19 Swedish vessel stopped by loyalists off Cadiz. Enters later.  
19 German S.S. *Kamerun* stopped by loyalist vessel 7½ miles off Cadiz. Germany brands action "piracy," and orders vessels to resist, and warships to open fire upon attacking vessels outside the 3-mile limit.  
23 British S.S. *Gibal Zirjon* stopped and searched by loyalist craft 6 miles off east coast, British destroyer secures release and admission of error by Spanish master.  
\*— British S.S. *Masklyn* stopped and searched on high seas by rebel cruiser. Diverted from course.
- Sept. 14 British S.S. *Gibal Zirjon* stopped again on high seas. British warship again releases vessel.
- Oct. 24 Rebels capture an unnamed Greek vessel on high seas and take into Morocco.
- Nov. 13 Russian S.S. *Vodnikov* captured by rebels on high seas. Released Nov. 18.  
17 Norwegian S.S. *Lisken* captured by rebels 10 miles off Cape Finisterre. Cargo of food for Valencia.  
25 Norwegian and Greek vessels reported stopped on high seas by rebel craft.  
26 Russian vessel reported attacked by rebel craft on high seas.  
\*— British S.S. *Greatend* boarded by rebels on high seas and movements impeded.
- Dec. 7 Russia reports stoppage of 7 vessels upon high seas by rebels within past nine days. Charges piracy.  
14 Norwegian S.S. *Einar Jurl* captured by rebels on high seas off Cape Finisterre. Released upon receipt of diplomatic protest.

<sup>1</sup> Compiled from newspapers and from official sources. Dates given are as reported in the press, unless preceded by an asterisk in which case the date is that officially given as that of the occurrence of the incident.

- Dec. '17 German warship accosts British S.S. *City of Oxford* off Portugal.  
 25 German S.S. *Palos* seized by loyalists 17 miles off north coast, removing cargo and passengers. Upon failure to secure release of same, Germany seizes in retaliation two loyalist vessels.  
 31 Danish S.S. *Ingeborg* detained at sea by rebel cruiser.  
 \*— British S.S. *Etrib* fired at but not damaged 1½ miles off Europe Point on east coast.

## 1937

- Jan. \* 1 British S.S. *Blackhill* fired at but not damaged, 20 miles off Pasajes in the Bay of Biscay.  
 7 Norwegian S.S. *Ibis* seized by rebels and taken into Algeciras for examination.  
 9 Russian vessel reported taken into Ceuta by rebels for examination.  
 12 British S.S. *Bramhill* visited and boarded on high seas off Cape Tarifa by rebel cruiser.  
 16 Russian S.S.'s *Volga*, *Kara*, *Revolutsioner*, and Danish S.S. *Nordsoen* stopped in Straits of Gibraltar and taken into rebel ports.  
 20 Russian S.S.'s *Dickson*, and *Ural Masch* seized by rebels and taken into Ceuta. Swedish S.S. *Isa* stopped but released.  
 23 Norwegian S.S. *Carriere* seized by rebels off Aviles.  
 Feb. 26 Dutch S.S. *Ramboy* seized on high seas for resistance to visit and search.  
 Mar. 7 British S.S. *Springwear* resists search in Straits. Norwegian S.S.'s *Briedablik* and *Erica* forced into Ceuta to discharge cargo of Spanish fruit.  
 9 Dutch S.S. *Triton* forced into Ceuta for same purpose.  
 \*10 British S.S. *Nailsea Manor* fired at without damage in the Bay of Biscay at 40° 37' N., 4° 53' E. Unnamed Dutch S.S. forced into Pasajes for examination. Later released.  
 23 Rebels announce that 30 foreign ships with munitions have been captured by them since March 3. Names and particulars not given.  
 23 British S.S.'s *Menin Ridge* and *Stanholm* stopped by rebel craft on high seas. British naval commander protests.  
 \*27 British S.S. *Magdalena* fired at without damage in the Bay of Biscay at 43° 50' N., 4° 05' E.  
 31 British S.S. *Thorpehall* resists visit and search by rebel trawler in Straits of Gibraltar.  
 \*— British S.S. *Pacheco* stopped on high seas by rebels and sent in to Gibraltar. British S.S. *Grebe* stopped by rebel trawler near Belle Isle.

- Apr. 2 British S.S. *Niobe* seized by rebels and forced into Ceuta to discharge cargo. French S.S. *Imerethie II* ordered into Palma by rebel craft, but escapes after calling French warship. France orders naval vessels to free all French merchant vessels stopped by either side.
- 6 Panama S.S. *Andras* sunk off Bilbao by rebel cruiser. British S.S. *Thorpehall* stopped off Bilbao. Calls upon British warship for release, and proceeds into Bilbao.
- 8 Norwegian shipowners, with government backing, present claim of \$250,000 to rebels for seizure of vessels and cargoes.
- 11 British S.S. *Seven Seas Spray* forbidden to enter Bilbao by rebel cruiser within territorial waters.
- 13 British S.S. *Olavus* stopped on high seas by rebel cruiser after leaving Bilbao. British warship releases vessel.
- 16 Dutch S.S. *Sarkana* seized in Straits by rebel cruiser. Dutch warship refuses aid on learning vessel carries munitions.
- 20 Unnamed Mexican vessel with munitions for loyalists seized on high seas by rebels.
- \*— British S.S. *Joyce Llewellyn* ordered into Gibraltar by rebels.
- 23 British S.S.'s *Hamsterley*, *MacGregor* and *Stanbrook* with food for Bilbao stopped on high seas by rebel cruisers. British warships demand release and no further molestation.
- 26 British S.S. *Oak Grove* with food for Santander stopped by rebel cruiser on high seas but released by British warship. British S.S. *Great Hope*, Valencia to Antwerp, forced into Gibraltar by rebel cruiser.
- May 1 British Government restates its policy to give armed protection to all British merchant vessels up to the 3-mile limit.
- June \*21 British S.S. *Gwenhills* fired at without damage in the Bay of Biscay at 43° 31' N., 3° 13' W.
- \*— British S.S. *Bramhill* stopped on high seas and ordered into Gibraltar by rebels. British S.S. *Pacheco* stopped on high seas off Cape Finisterre by rebel craft.
- July 5 French S.S. *Tregasel* seized by rebels off Santander, but later released.
- \*7 British S.S. *Gordonia* stopped by rebel craft 5 miles off Cape Mayor. Released by British warship.
- \*15 British S.S. *Molton* captured by rebel cruiser off Santander. British vessel within territorial waters but cruiser on high seas at time. British warship refuses aid. Released Sept. 9.
- \*17 British S.S. *Candleston Castle* seized by rebels in territorial waters off Gijon. Released Sept. 11. British S.S. *Sarastone* accosted but escapes.

- July \*22 British S.S. *MacGregor* with refugees, proceeding out of Santander, ordered within territorial waters by rebel cruiser to stop. Refuses. British warship orders cruiser to cease firing at the vessel when the latter reaches the high seas.
- \*24 British S.S. *Mirapamu* seized by rebels in territorial waters off Gijon. Released Nov. 13.
- 26 Russian S.S. *Vaarlaam Avensov* captured by rebels on high seas off Gibraltar.
- \*— British S.S. *Foreland* stopped off Gibraltar by rebels. British S.S. *Dover Abbey* threatened by rebel warships on high seas between Marseilles and Alicante.
- Aug. 10 Rebels board French S.S. *Marechal Lyautey* on high seas (location not specified), and remove 3 Spaniards of military age. [Officially stated that it is thought that this incident occurred in a Spanish port, probably Las Palmas.] Sharp protest.
- \*10 British S.S. *Caper* captured by rebels in territorial waters. Released Oct. 15.
- 14 French S.S. *Paramé* stopped by rebel craft 20 miles off Bizerte.
- \*28 British S.S. *Bramhill* fired on without damage in the Bay of Biscay 5 miles off Cape Penas. (Rebels allege she had crossed the 3-mile limit.)
- \*30 British S.S. *Burlington* captured by rebel vessel in territorial waters on east coast and taken to Palma. Released Sept. 20.
- \*— British S.S. *Dover Abbey* stopped and boarded on high seas.
- Sept. \* 1 British S.S. *Seven Seas Spray* captured by rebels in Santona harbor. British S.S. *Hillfern* fired at without damage in the Bay of Biscay at 43° 57' N., 5° 20' W.
- \* 8 British S.S. *Stanwold* captured by rebels in territorial waters off Gijon. Released Nov. 1.
- \*— British S.S. *Rumford* sent into Ceuta by rebels. Later released.
- Oct. \* 3 British S.S. *Bobie* captured by rebels. Released Nov. 13.
- \* 5 British S.S. *Dover Abbey* captured by rebels (location not specified). Released Nov. 13. British S.S. *Yorkbrook* captured by rebels same day. Location not specified. Released Nov. 20. French S.S. *Cassidaigne* seized and taken into Palma. Later released.
- Dec. \*17 French S.S. *Sydney* taken into Ceuta, and confiscated.
- 21 French S.S. *François* taken into Ceuta, and confiscated.
- \*28 French S.S. *Yolandre* seized on high seas by rebel cruiser, and taken into Palma. Released by French warship.
- \*— British S.S.'s *Shetland*, *Rutland*, *Greathope* ordered into Ceuta by rebels. Naval patrol intervenes to prevent deviation.

1938

- Jan. 18 American S.S. *Nantucket Chief* seized by rebels on high seas off east coast with cargo of oil for Valencia. Released after protest.
- 25 French S.S. *Prado* seized by rebel cruiser 8 miles off Palamos. Released by French warship. Cargo of food for Barcelona.
- 27 British S.S. *Sheaf Crest* stopped on high seas by rebel craft. Location not specified. Released by British warship.
- Nov. 22 Norwegian tanker *Petter* en route from Constanza to Algiers, seized by insurgents off Pantelleria and taken to Palma. Held.
- Dec. 6 Norwegian S.S. *Norseman*, under Panama flag, en route from Black Sea to Oslo with cargo of grain for the Norwegian Government, seized on high seas by insurgents. Taken before tribunal at Palma and condemned as "prize of war." Sharp protest. Greek S.S.'s *Nitsa* and *Mount Cynthos*, under charter to the British Government with cargoes of grain, seized and detained by the insurgents. Strong protest secures release. Greek S.S.'s *Faneromeni*, *Elploia*, *Garonfolia* also reported held at Palma. Stated in British House of Commons insurgents have recently released 9 ships in which there were British interests. No names reported in press.
- 8 French S.S. *Grand Quevilly* in Straits accosted by insurgent war vessel. French destroyer orders insurgent vessel cease interference.
- Norwegian S.S. *Norseman* released.
- 16 Greek S.S. *Elploia* released.
- 22 Greek S.S. *Ilissos*, with cargo of coal to Oran, seized by insurgents and taken into port.

1939

- Jan. 7 Greek S.S. *Eleni* reported held in Ceuta by insurgents since November. Ship en route from Cuba to Marseilles with cargo of sugar belonging to British interests. Greek S.S. *Ilissos* released. Cargo retained.

## II

## INTERFERENCE BY AIRCRAFT

1936

- July \*20 British S.S. *Kingsborough* bombed on high seas in Mediterranean without damage. British S.S. *Gibel Dersa* bombed near Gibraltar by unidentified aircraft.
- 21 Norwegian S.S. *Frank* and British S.S. *Mahratta* bombed in the Straits of Tariffa.

- July 23 British and French Governments advise rebels to cease "deliberate and irresponsible bombing of the shipping of the Straits."  
 24 American S.S. *Exmouth* bombed by rebel airplane in Straits. Protest.  
 — British S.S. *Chitral* bombed by rebel airplane in Straits of Gibraltar.
- Aug. 7 Loyalist airplanes bomb unnamed French and Italian vessels on the high seas.  
 \*17 British destroyer *Blanche* bombed without damage off Melila.  
 30 U.S.S. *Kane* bombed by rebel plane 38 miles at sea off east coast. Protest.

## 1937

- Jan. 18 French destroyer *Maillé Brézé* bombed on high seas by unidentified plane. French Government orders counter-attacks in future cases.  
 \*— British S.S. *Ponzano* bombed in air raid on Malaga.
- Feb. \* 2 British warship *Royal Oak* object of bombing attack, without damage, by unidentified plane in the Mediterranean at 36° 10' N., 4° 45' W. Britain protests to both sides. Demands security.  
 3 Norwegian Government demands \$100,000 indemnity from Spanish Government for bombing of S.S. *Guines* with loss of life on Dec. 8, 1936.  
 \* 6 British S.S. *British Endeavor* bombed without damage by rebel airplane 100 miles, 75° off Gibraltar. British S.S. *Pizarro* bombed without injury 12 miles south of Adra on east coast.  
 \*13 Rebel planes attack British destroyers *Havock* and *Gypsy* on high seas off Cape Tenez, Algeria, at 37° N., 1° 10' E. Plane fired upon in return. Protest by British Government.  
 20 Unidentified plane drops bombs near French S.S. *Djebel Armour* off Alicante.
- Mar. 8 Unidentified plane drops bombs near French S.S. *Marie Thérèse* off Palmas.  
 9 French S. S. *Djebel Antar* bombed 100 miles off Minorca. Protest made to rebels.
- Apr. \* 6 British destroyer *Gallant* bombed 15 miles off Cape Antonio on east coast. Protest to rebels. Apology offered.
- May 24 British S.S. *Oak Grove* bombed in Bilbao by rebel plane.  
 26 British S.S. *Greatend* bombed by rebel plane at Almeria.
- May 28 Italian warship *Barletta* bombed by loyalist plane while lying in Palmas harbor. Italian war vessels ordered to return fire in future.

- May \*29 British S.S.'s *Pinzon*, *Essex Judge*, *Peckham* bombed at Valencia by rebel planes. German battleship *Deutschland* bombed with loss of life by loyalist plane while at anchor at Ibiza. Protest and reprisal.
- \*— British S.S. *Zelo* bombed at Castellon.
- June 18 Italian S.S. *Madda* bombed by loyalist plane, location not specified.
- July 25 British S.S. *San Quentin* at Valencia bombed by rebel plane.
- Aug. \* 6 British S.S. *Noemijulia* bombed without damage in the Mediterranean at  $42^{\circ} 13' N.$ ,  $3^{\circ} 45' E.$
- 7 French S.S. *Djebel Armour*, Italian S.S. *Mongioia*, British S.S. *British Corporal*, Greek S.S. *Ktistakis* bombed on high seas by rebel planes. Protests to rebels by British and French Governments.
- 11 Yugoslavian S.S. *Plovnik* bombed on the high seas, location not specified.
- 14 Danish S.S. *Edith* sunk by rebel planes 30 miles off Barcelona. Observation Officer on board. Panama S.S. *G. W. McKnight* bombed on high sea, location not stated.
- \*17 British S.S. *City of Wellington* bombed on high seas, location not stated. No damage done.
- 24 British S.S. *Noemijulia* bombed by rebel planes 15 miles off Cape Creus.
- 27 British S.S. *Romford* bombed by rebel plane on high seas off Gijon.
- 28 British S.S.'s *African Trader* and *Hilda Moller* bombed at Gijon by rebel planes.
- 29 British S.S.'s *Stanwood* and *Stanbridge* bombed at same port by rebel planes.
- Sept. 2 Greek S.S. *Tsepo* bombed on high seas off Barcelona by rebel planes.
- 9 British S.S. *Hillfern* fired at by rebel plane in the Bay of Biscay. British S.S. *Hamsterley Sheaf* at Tarragona bombed by rebel plane.
- \*17 British destroyer *Fearless* bombed in the Bay of Biscay at  $43^{\circ} 39' N.$ ,  $5^{\circ} 42' W.$
- 22 French S.S. *Kontoubia* bombed off Balearic Isles by rebel plane.
- \*— British S.S. *Jean Weams* damaged in air raid at Valencia.
- Oct. \* 7 Italian S.S. *Ettore* attacked and machine gunned east of Cape Palos.
- \* 8 British S.S. *Cervantes* bombed 13 miles off Tarragona. Identity of plane not given.

- Oct. \*19 Panama S.S. *Reina* bombed and sunk at Port Musel.  
 \*21 British S.S. *Marvia* bombed by unidentified plane in Mediterranean at  $41^{\circ}$  N.,  $3^{\circ}$  E.  
 \*24 French S.S. *Aried Mellah* bombed and sunk north of Minorca.  
 \*30 British S.S. *Jean Weams* bombed and sunk, with notice, by rebel plane 15 miles off Cape Sebastian at  $41^{\circ} 42'$  N.,  $3^{\circ} 24'$  E. Observation Officer on board. Rebels express regret. Give orders to planes to cease bombing of foreign shipping on high seas and offer to arbitrate damages due for sinking of vessel.  
 \*— British S.S. *Stangrove* damaged in air raid on Port Musel.
- Nov. 4 French S.S. *La Corse* attacked by aircraft 18' S.E. of Cape Matara.  
 \*29 French S.S. *Lezardrieux* attack by aircraft 15' N.E. of Cape Creus.

1938

- Jan. 2 French S.S. *Guaruga* bombed by unidentified plane east of Almeria.  
 \*21 British S.S. *Thorpeness* at Tarragona with cargo of coal for the Spanish Government bombed by rebel plane. Protest.
- Feb. 5 British S.S. *Alcira* bombed and sunk with notice by rebel planes 20 miles off Barcelona. Cargo of coal for the Spanish Government. Observation Officer on board. Protest.  
 \*22 French S.S. *Prado* machine-gunned by aircraft 15' off Valencia.  
 24 British S.S. *Shetland* at Valencia machine-gunned by rebel plane. British S.S. *Bremden* at Sagunto bombed by rebel plane.
- Mar. 7 British destroyer *Boreas* bombed at sea by loyalist plane while taking off survivors from sinking rebel cruiser.  
 8 British destroyers *Blanche* and *Brilliant* bombed while on anti-submarine patrol on high seas off east coast of Spain. No identification of aircraft.  
 16 British S.S. *Stanwell* at Tarragona bombed by rebel plane. Danish Observation Officer injured.
- Apr. 5 British S.S.'s *Meophan*, *Stanwell*, *Cemenco*, *Flowergate*, *Kenfigpool* at Tarragona bombed by rebel planes. *Meophan* damaged, others not.  
 26 British S.S.'s *Stanland* and *Celtic Star* at Valencia bombed with loss of life by rebel planes.  
 30 British S.S. *Stancroft* attacked by rebel planes off Barcelona. S.S. *Stanbrook* the same.
- May 2 British S.S. *Surrey Brook* bombed on high seas 29 miles south-east of Barcelona by rebel plane. Cargo of oranges out of Spain.



- May 7 British S.S.'s *Greatend*, *Stanhope*, *Stancroft* at Valencia bombed by rebel planes. *Greatend* inside harbor, others outside breakwater.
- 16 British S.S.'s *Euphorbia* at Barcelona and *Greatend* at Valencia bombed by rebel planes.
- 23 British S.S. *Penthames* at Valencia with a cargo of wheat bombed by rebel plane.
- 26 British S.S. *Thorpehall* bombed and sunk outside Valencia breakwater by rebel plane. Observation Officer on board and injured. Cargo of wheat for Valencia.
- 27 British S.S. *Greatend* bombed and sunk in Valencia harbor by rebel plane. Government forces on shore refuse to allow Italian Observation Officer to land. When latter subsequently is brought into port by British S.S. *Thorpeness* after being picked up from open boat on seas, he is arrested and released only upon the presentation of a demand by the British Government. (London *Times*, May 30.)
- May \*27 Panama S.S. *Nausicaa* bombed and set on fire off Minorca.
- 31 French S.S. *Djem* at Valencia bombed by rebel plane with loss of life. British S.S.'s *Penthames* and *Thurston* also objects of attack.
- June 1 British S.S. *Penthames* bombed and sunk by rebel planes at Valencia. Protest. Rebels express regret and give orders to planes to cease deliberate attacks upon British vessels.
- \* 4 Italian S.S. *Etruria* reported damaged from air attack.
- 7 British S.S. *St. Winifred* bombed at Alicante with loss of life by rebel plane. Cargo of food to order of Red Cross. British tanker *Maryad* reported bombed at Alicante by rebel plane on June 4.
- 8 Dutch S.S. *Parklaan* at Barcelona bombed by rebel plane. British S.S.'s *Thorpehaven*, *English Tanker* at Alicante and *Thurston* at Valencia bombed and rendered unseaworthy by rebel planes.
- 9 British dredger sunk at Gandia by rebel plane.
- 10 French S.S. *Brisbane* bombed by rebel plane 1 mile off Denia. Observation Officer and sailors killed. Cargo of fertilizer. British S.S. *Isodora* at Castellon bombed by rebel plane. Cargo of grain for Spanish Government. British S.S. *Marconi* at Valencia attacked by planes.
- 11 British S.S.'s *Isodora* at Castellon and *Thorpehaven* at Alicante again bombed by rebel planes. Both vessels sunk. British S.S. *Stanray* en route from Alicante to Valencia machine-gunned by rebel plane. French S.S. *Brisbane* bombed again and sunk.
- \*15 Dutch S.S. *Parklaan* damaged during air raid on Barcelona.
- 16 British S.S.'s *Thurston* and *Seapharer*, French S.S.'s *Gaulois* and *Cap Bear* all at Valencia bombed by rebel planes.

- June 20 American S.S. *Wisconsin* at Barcelona bombed by rebel plane. British S.S.'s *Thorpe Bay*, *Lucky*, *Hester* at Barcelona hit by bombs.
- 22 British S.S. *African Trader* stopped on high seas off east coast of Spain and ordered to Palma by rebel planes.
- 23 British S.S.'s *Thorpeness* on June 21 and *Sunion* on June 22 bombed and sunk by rebel planes just outside of Valencia Harbor. *Sunion* warned.
- 28 British S.S.'s *Arlon* at Valencia and *Farnham* at Alicante bombed and sunk by rebel planes.
- July 20 British S.S. *Stanland* bombed at Valencia.
- 28 British S.S. *Dellwyn* bombed at Gandia.
- Aug. 8 British S.S. *Lake Lugano* bombed and sunk at Palamos.
- 12 British S.S. *Stanlake* at Valencia machine-gunned by rebel plane.
- 16 British S.S. *Hilfern* at Valencia bombed with loss of life. Unnamed Finnish vessel also reported bombed and damaged. British S.S. *Noemijulia* at Alicante bombed by rebel plane.
- 20 British S.S. *Stanbrook* bombed and sunk at Valencia. British S.S. *Stanford* bombed off Barcelona by rebel plane.
- Sept. 4 British S.S. *African Mariner* at Barcelona bombed by rebel plane.
- 5 British S.S.'s *Gothic* and *Thorpe Bay* at Barcelona, and *Luimneach* at Valencia bombed by rebel planes.
- 10 British S.S. *Bramhill* at Barcelona bombed by rebel plane.
- 11 British S.S.'s *Gothic* and *Lake Geneva* at Barcelona, and *Transit* at Valencia bombed by rebel planes.
- 14 British S.S. *Stancroft* at Barcelona bombed by rebel planes.
- 17 British S.S.'s *Bobie*, *Stanlake*, *Caulake*, *Powier*, *Seabank Spray* and *Lake Hallwell* all at Barcelona bombed by rebel planes.
- Oct. 20 British S.S.'s *Lake Hallwell*, *African Mariner* at Barcelona bombed by rebel planes.
- Nov. 2 British S.S. *Gothic* bombed by rebel planes at Barcelona.
- 4 British S.S. *Stanforth* at Valencia bombed by rebel plane.
- 14 British S.S.'s *Lake Hallwell* and *Clare Lilley* at Barcelona bombed by rebel plane.
- 15 British S.S. *Stratford* at Valencia bombed by rebel plane.
- 23 British S.S.'s *Lake Hallwell*, *Lake Neuchatel*, *Kensit Pool* all at Barcelona bombed by rebel planes.
- 25 British S.S.'s *Kaolack*, *Bobie*, *Stanwold*, *Cemenco* at Valencia bombed by rebel planes.

- Nov. 29 British S.S.'s *Stanwell*, *Stangrove* at Barcelona bombed by rebel planes.
- Dec. 3 British S.S. *Surrey Book* at Valencia bombed by rebel plane.  
 6 British S.S.'s *Stanwell*, *African Mariner*, *Thorpehall* at Barcelona hit by bomb fragments.  
 28 British S.S. *Stancroft* bombed and sunk at Barcelona by rebel planes.  
 30 British S.S. *Marionga* bombed on high seas by rebel plane 20 miles of Cape San Antonio. Sharp protest.  
 31 Same vessel bombed at Valencia by rebel plane.

## 1939

- Jan. 5 British S.S. *Stanwell* at Barcelona bombed by rebel plane.  
 23 British S.S.'s *Seabrook Spray*, *Yorkbrook*, *Dover Abbey*, *African Mariner* at Barcelona bombed by rebel planes. *Yorkbrook* sunk.  
 24 British S.S.'s *Dover Abbey*, *Thorpby*, *Huntress*, *African Mariner* at Barcelona bombed. Latter vessel sunk.  
 27 British S.S. *Foynes* and Greek S.S. *Suzi* at Valencia bombed by rebel planes. *Foynes* sunk.

## III

## INTERFERENCE BY SUBMARINES

## 1936

- Aug. 16 American S.S. *Excambion* visited on high seas by loyalist submarine. Released.

## 1937

- June 15 German cruiser *Leipzig* reported attacked by unknown submarine, and again on the 18th.
- Aug. \*14 French S.S. *Paramé* reported being object of an unsuccessful submarine torpedo attack off Tunis.  
 15 Panama S.S. *George McKnight* torpedoed and sunk in Malta Channel.  
 28 French S.S. *Theophile Gautier* reported chased by unknown submarine while entering Dardanelles.  
 \*29 British S.S. *Carpio* object of unsuccessful submarine torpedo attack in Mediterranean at 38° 55' N., 0° 20' E.  
 31 Russian S.S. *Timiriasev* torpedoed and sunk without warning by unknown submarine 5 miles off Algeria. Cargo of coal from Cardiff to Port Said.

- Aug. \*— British destroyer *Havock* object of unsuccessful submarine torpedo attack while on international naval patrol duty on high seas in the Mediterranean at  $38^{\circ} 46' N.$ ,  $00^{\circ} 31' E.$
- Sept. 1 British S.S. *Woodford* torpedoed and sunk without warning by unknown submarine between Spanish mainland and the Columbrete Islands at  $40^{\circ} 24' N.$ ,  $1^{\circ} E.$  Cargo of oil for Valencia. Russian S.S. *Blagoev* torpedoed and sunk without warning by submarine flying insurgent flag 15 miles off Greek island of Skyros. Cargo of asphalt for France.
- 7 British S.S. *Pegasus* en route from Batum to Alexandria, stopped off Dodecanese Islands by submarine refusing to reveal its identity. Released.
- \*— British S.S. *Airam* stopped and boarded by unknown submarine off east coast of Spain.
- Oct. 11 British destroyer *Basilisk* reported in press as the object of an unsuccessful submarine attack by unknown submarine on Oct. 4. Depth charges dropped. No evidence of a submarine attack ever officially established.

## 1938

- Jan. 11 Dutch S.S. *Hannah* torpedoed and sunk without warning by unknown submarine 47 miles off Cape San Antonio.
- \*19 British S.S. *Clonlara* fired at by torpedo from unknown submarine off Valencia.
- \*22 British S.S. *Lake Geneva* reported the object of an unsuccessful submarine attack  $3\frac{1}{2}$  miles off Valencia. Protest made by British Government to rebels, who express regret.
- Feb. 1 British S.S. *Endymion* torpedoed and sunk by rebel submarine 16 miles off Cape Tinoso. Observation Officer on board and killed. Ship 20 miles off recommended course, per Nyon Arrangement. Cargo of coal for Cartagena. (Official statement says the vessel was sunk by mine.)

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